50/pt.200-599/988

code of federal regulations

Wildlife and Fisheries

50

PARTS 200 TO 599

Revised as of October 1, 1988

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Wildlife and Fisheries

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PARTS 200 TO 599

Revised as of October 1, 1988

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AS OF OCTOBER 1, 1988

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 50 CFR 204.1 *refers to Title 50, Part 204, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1988.

THIS TITLE

Title 50—FISH AND WILDLIFE is composed of three volumes. The first volume contains Parts 1 to 199 of the current regulations issued by the United States Fish and Wildlife Service as of October 1, 1988. The second volume, containing Parts 200 to 599, includes the current regulations issued by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; International Regulatory Agencies (Fishing and Whaling), Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations; and the Marine Mammal Commission as of October 1, 1988. The third volume, containing Part 600 to end, includes the current regulations issued by Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce, as of October 1, 1988.

Alphabetical listings of endangered and threatened wildlife and plants appear in Part 17.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Ruth C. Pontius.

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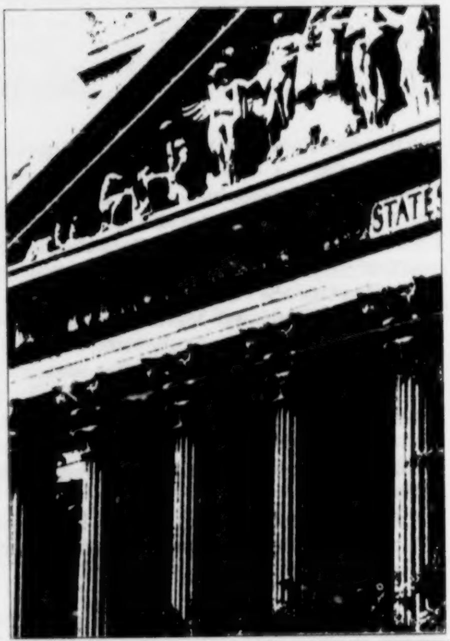

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Title 50—Wildlife and Fisheries

(This book contains Parts 200 to 599)

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CROSS REFERENCES: Commercial fishing on Red Lake Indian Reservation, Bureau of Indian Affairs: 25 CFR Part 242.

Disposal of certain wild animals in national parks, National Park Service: 36 CFR Part 10.

Exchanges of land for migratory bird or other wildlife refuges, Bureau of Land Management: 43 CFR 2200.0-1—2272.1.

Fishing, hunting, trapping, and protection of wildlife in national forests and wildlife refuges, Forest Service: 36 CFR Part 241, §§ 261.8, 261.9.

Fishing, hunting, trapping, and protection of wildlife in national parks, memorials, recreation areas, etc., National Park Service: 36 CFR Parts 2, 7, 20.

Fishing and hunting in reservoir areas, Corps of Engineers: 36 CFR 327.8.

Free entry of animals, birds and products of American fisheries under specified conditions, Customs Service: 19 CFR 10.70—10.83.

Grazing areas for wildlife maintenance, Bureau of Land Management: 43 CFR Part 4110.

Making pictures, television production, or sound tracks on areas administered by the United States Fish and Wildlife Service or the National Park Service: 43 CFR 5.1.

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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SUBCHAPTER A—GENERAL PROVISIONS

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

AUTHORITY: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the National Marine Fisheries Service by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA) of 1980. This part fulfills the requirements of section 3507(f) of the PRA, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

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§ 215.12	-0084 and -0085
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[1] Pending.

[50 FR 46068, Nov. 6, 1985, as amended at 52 FR 36780, Oct. 1, 1987; 52 FR 38233, Oct. 15, 1987; 53 FR 24644, June 29, 1988]

SUBCHAPTER B—NORTH PACIFIC COMMERCIAL FISHERIES

PART 210—NORTH PACIFIC AREA

Sec.
210.1 Definition.
210.10 Salmon fishing prohibited, exception.

AUTHORITY: Sec. 1, 68 Stat. 698 as amended; 16 U.S.C. 1021 *et seq.*

§ 210.1 Definition.

(a) For the purpose of the regulations of this part the North Pacific area is defined to include all waters of the North Pacific Ocean and Bering Sea north of 48°30′ north latitude, exclusive of waters adjacent to Alaska north and west of the International Boundary at Dixon Entrance which extend 3 miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland.

(b) The exclusive waters adjacent to Alaska shall be those in which salmon net fishing is permitted under State of Alaska regulations. Federal salmon net fishing regulations in exclusive waters outside of State waters shall be the same as regulations promulgated by the State of Alaska for its citizens.

[35 FR 7070, May 5, 1970]

§ 210.10 Salmon fishing prohibited, exception.

No person or fishing vessel subject to the jurisdiction of the United States shall fish for or take salmon with any net in the North Pacific area, as defined in this part: *Provided*, That this shall not apply to fishing for sockeye salmon or pink salmon south of latitude 49° north.

[35 FR 7070, May 5, 1970]

SUBCHAPTER C—MARINE MAMMALS

PART 215—PRIBILOF ISLANDS

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215.2 Definitions.
215.3 Penalties.

Subpart B—Public Display of Fur Seals

215.11 Taking of fur seals for public display.
215.12 Public display permits.
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215.21 Visits to fur seal rookeries.
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Subpart D—Taking for Subsistence Purposes

215.31 Allowable take of fur seals.
215.32 Restrictions on taking.
215.33 Disposition of fur seal parts.
215.34 Cooperation with Federal officials.

AUTHORITY: 16 U.S.C. 1151-1175, 16 U.S.C. 1361-1384.

SOURCE: 41 FR 49488, Nov. 9, 1976, unless otherwise noted.

Subpart A—General

§ 215.1 Purpose and scope.

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966. The provisions of these regulations apply to the administration of the Pribilof Islands, the take of fur seals, and the procedures for issuing, amending or rescinding display permits for fur seals.

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this part:

(a) *Act* means the Fur Seal Act, as amended, 16 U.S.C. 1151-1175.

(b) *Alaskan Native* has the identical meaning under this section as in 50 CFR 216.3.

(c) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) *Fur seal* means North Pacific fur seal, scientifically known as *Callorhinus ursinus.*

(e) *Handicraft articles* means items made by an Indian, Aleut, or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

(1) Where commonly produced by Alaskan Natives on or before October 14, 1983, and

(2) Are composed wholly or in some significant respect of natural materials, and

(3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices.

Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tanner registered under 50 CFR 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

(f) *Public display* means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

(g) *Pribilovians* means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

(h) *Subsistence uses* means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—

(i) For other wildlife or fish or their parts, or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(i) *Wasteful manner* means any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a fur seal or which is not immediately followed by a reasonable effort to retrieve the fur seal.

[51 FR 24839, July 9, 1986]

§ 215.3 Penalties.

(a) *Criminal penalties.* Any person who knowingly violates any provision of the Act or of any permit issued thereunder or regulation contained in this part will, upon conviction, be fined not more than $20,000 for such violation, or be imprisoned for not more than one year, or both.

(b) *Civil penalties.* Any person who violates any provision of the Act or of any permit issued thereunder or regulation contained in this part may be assessed a civil penalty of not more than $10,000 for each such violation.

[51 FR 24840, July 9, 1986]

Subpart B—Public Display of Fur Seals

§ 215.11 Taking of fur seals for public display.

(a) Fur seals will be made available for public display only to holders of public display permits issued pursuant to § 215.13. All takings of fur seals will be by personnel of the National Marine Fisheries Service. The fur seals will thereafter be made available to a permit holder at a place and under such conditions as determined by the Assistant Administrator.

(b) A fee of $600 per animal will be charged for the services provided by the National Marine Fisheries Service in capturing, caring for and holding animals taken for public display, which shall include the fee for permit issuance. The fee is based upon a reasonable approximation of the costs involved in labor, supervision, administration, and overhead. The Assistant Administrator may change the amount of the fee at any time he determines that a different fee is reasonable. A change in fee may be accomplished by publication in the FEDERAL REGISTER of the new amount, without the necessity of amending these regulations.

[41 FR 49488, Nov. 9, 1976, as amended at 50 FR 27921, July 8, 1985]

§ 215.12 Public display permits.

(a) The Assistant Administrator may issue permits authorizing the possession and transportation of fur seals for public display. Any person desiring to obtain such a permit may make application to the Assistant Administrator. The sufficiency of the application shall be determined by the Assistant Administrator and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The information requested will be used as the basis for determining whether an application is complete and whether a public display permit should be issued. An original and two copies of the complete application shall be submitted to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Assistance in preparing the application may be obtained by writing the above address to the attention of the Marine Mammals and Endangered Species Division, or by calling the

Marine Mammals and Endangered Species Division, in Washington, DC (a/c 202/634-7529). In preparing an application for a public display permit, provide the following information:

(1) *Title:* Application for Public Display Permit pursuant to the Fur Seal Act of 1966;

(2) List the date of the application.

(3) If the applicant is a partnership or a corporate entity, set forth the details. If the fur seal to be displayed is to be displayed by a party in addition to the applicant, set forth the name of the party and such other information as would be required if such party were an applicant.

(4) Provide a statement on the purpose of the proposed display, including a brief description of:

(i) The need for the fur seal(s);

(ii) How they will be used.

(5) Provide a description of each animal desired, including the age, sex, and size; and a list of the desired dates of delivery.

(6) Describe the manner of transportation of fur seals including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animals from the capture site to the display facility;

(iv) Length of time in transit for any future move or transfer of the animals that is planned;

(v) The qualifications of the common carrier or agent used for the transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used to hold the animal before and during transportation; and

(vii) Special care before and during transportation, such as salves, antibiotics and moisture.

(7) Describe the contemplated care and maintenance of any fur seal sought, including a complete description of the the facilities where such animals will maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities, and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal(s).

(8) Provide a detailed description of the proposed display, including:

(i) A description of the manner, location and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated display; and

(v) A description of the applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(9) For the year preceding the date of this application, provide the following:

(i) A list of all marine mammals captured, transported or maintained for any purpose by or on behalf of the applicant;

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities including when available copies of post-mortem reports; and

(iv) The steps which have been taken by the applicant to avoid or reduce such mortalities.

(10) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Fur Seal Act of 1966 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(11) The applicant must sign the application.

(b) Upon receipt of an application for a public display permit, the Assistant Administrator shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Assistant Administrator shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Assistant Administrator shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Assistant Administrator may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Assistant Administrator may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified or revoked pursuant to § 215.13z. In determining whether to issue a public display permit, the Assistant Administrator shall, among other criteria, consider whether the proposed taking will be consistent with the policies and purposes of the Act: Whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including:

(1) The methods of transportation, care and maintenance to be used with live marine mammals;

(2) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(3) The transferability or assignability of the permit; and

(4) The sale or other disposition of the fur seal and its progeny.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[41 FR 49488, Nov. 9, 1976, as amended at 48 FR 57301, Dec. 29, 1983; 50 FR 27921, July 8, 1985]

§ 215.13 Procedures for the issuance, modification, suspension or revocation of permits.

(a) Whenever a complete application for a permit is received by the Assistant Administrator, he shall, as soon as practicable, publish a notice thereof in the Federal Register. Such notice shall set forth a summary of the information contained in the application. Any interested party may, within 30 days after the date of publication of the notice, submit to the Assistant Administrator his written data or views with respect to the taking proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the Federal Register not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Except as provided in Subpart D of 15 CFR Part 904, any permit shall be subject to modification, suspension or revocation by the Assistant Administrator in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken and a summary of the reasons therefore;

(2) The steps, if any, which the permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Assistant Administrator within 10 days after the date of receipt of the aforesaid notice or such other date as may be specified in the notice to the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Assistant Administrator and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of the hearing. The Assistant Administrator may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, comments and briefs at the hearing. A summary record shall be kept of the hearing.

(e) The Assistant Administrator shall make a determination regarding the proposed modification, suspension or revocation as soon as practicable after the close of the hearing or if no hearing is held as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the Assistant Administrator's decision to modify, suspend or revoke shall be published in the FEDERAL REGISTER as soon as practicable.

(f) Any permittee shall have the opportunity to request modification of a permit. An application to modify a permit shall contain, to the extent relevant, the information requested in § 215.13. An application to modify a permit shall be processed in accordance with this section.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[41 FR 49488, Nov. 9, 1976, as amended at 48 FR 57301, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984; 50 FR 27921, July 8, 1985]

§ 215.14 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the permittee or his authorized representative who accompanies the transit of a fur seal for which the permit was issued.

(b) A duplicate copy of the permit must be physically attached to the container, package, enclosure, or other means of containment in which the fur seal is placed for the purpose of storage, transit, supervision or care.

Subpart C—Administration

§ 215.21 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

§ 215.22 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

§ 215.23 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

§ 215.24 [Reserved]

§ 215.25 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

§ 215.26 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands by posting in public places and brought to the attention of tourists by personal notice.

§ 215.27 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions: (1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, Wash. 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.

[43 FR 5521, Feb. 9, 1978]

Subpart D—Taking for Subsistence Purposes

SOURCE: 51 FR 24840, July 9, 1986, unless otherwise noted.

§ 215.31 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

(a) For subsistence uses, and

(b) Not accomplished in a wasteful manner.

§ 215.32 Restrictions on taking.

(a) The harvests of seals on St. Paul and St. George Islands shall be treated independently for the purposes of this section. Any suspension, termination, or extension of the harvest is applicable only to the island for which it is issued.

(b) By April 1 of each year the Assistant Administrator will publish in the FEDERAL REGISTER a summary of the preceding year's harvest and a discussion of the number of seals expected to be taken that year to satisfy the subsistence requirements of each island. Following a 30 day public comment period, but before the start of the harvest, a final notice of the expected harvest levels will be published.

(c)(1) No fur seal may be taken on the Pribilof Islands before June 30 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of suba-

dult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(5) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(d) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. Scheduling must be consistent with the following restrictions:

(1) *St. Paul Island*—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(2) *St. George Island*—Seals may only be harvested from the following haulout areas: Northeast and Zapadni. Neither haulout area may be harvested more than twice per week.

(e)(1) The Assistant Administrator is required to suspend the take provided for in § 215.31 when:

(i) He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached.

(2) A suspension based on a determination under paragraph (e)(1)(ii) of this section may be lifted by the Assistant Administrator if he finds that the conditions which led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (e)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (e)(1)(i) of this section is warranted. If a the harvest is not suspended under paragraph (e)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(f)(1) The Assistant Administrator shall terminate the take provided for in § 215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the island have been satisfied, whichever occurs first.

(2) Notwithstanding the requirements of paragraph (f)(1) of this section, the Assistant Administrator may allow taking under § 215.31 if he determines that, as of August 8, the subsistence needs of the Pribilovians have not been met. In this case, the taking of seals may be extended for a period not to exceed September 30. If the harvest is extended beyond August 8, the Assistant Administrator shall terminate the take if:

(i) It is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) The number of female seals taken since June 30 exceeds one half of one percent of the total number of seals harvested for that island; or

(iii) The number of female seals harvested during any consecutive seven day period after August 8 exceeds 5.

§ 215.33 Disposition of fur seal parts.

Except for transfers to other Alaskan Natives for barter or sharing for personal or family consumption, no part of a fur seal taken for subsistence uses may be sold or otherwise transferred to any person unless it is a nonedible byproduct which:

(a) Has been transformed into an article of handicraft, or

(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Alaskan Native for conversion into an article of handicraft, or

(c) Is being sold or transferred to an Alaskan Native, or to an agent registered under 50 CFR 216.23(c) for resale or transfer to an Alaskan Native, who will convert the seal part into a handicraft.

§ 215.34 Cooperation with Federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,

(b) The extent of the utilization of fur seals taken, and

(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(e).

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

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AUTHORITY: 16 U.S.C. 1361 et seq., unless otherwise noted.

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§ 216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 216.2 Scope of regulations.

This Part 216 applies solely to marine mammals and marine mammal products as defined in § 216.3. For regulations under the Act, with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

§ 216.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 216:

"*Act*" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522.

"*Active sportfishing*" means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

"*Alaskan Native*" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"*Assistant Administrator*" means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

"*Authentic native articles of handicrafts and clothing*" means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to § 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

"*Certified charter vessel*" means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

"*Commercial fishing operation*" means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

"*Commercial passenger fishing vessel*" means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

"*Endangered Species*" means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see Part 17 of this title).

"*ETP*" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

"ETP Fishing Area 1" means the northern coastal portion of the ETP east of 117° W. longitude and north of 5° N. latitude.

"ETP Fishing Area 2" means the offshore area south of 14° N. latitude, north of 6° N. latitude, east of 150° W. longitude, and west of 123° W. longitude.

"ETP Fishing Area 3" means all other areas within the ETP not included in Fishing Areas 1 and 2.

"*Harvesting nation*" means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

"*Incidental catch*" means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"*Kill-per-ton*" means the number of small toothed cetacean marine mammals killed per ton of yellowfin tuna caught in sets made on marine mammals.

"*Marine environment*" means the oceans and the seas, including estuarine and brackish waters.

"*Marine mammal*" means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).

"*Native village or town*" means any community, association, tribe, band, clan or group.

"*Optimum sustainable population*" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

"*Pregnant*" means pregnant near term.

"*Purse seine set on common dolphins*" means a purse seine set in which more than 50 percent of the marine mammals captured are common dolphins.

"*Secretary*" shall mean the Secretary of Commerce or his authorized representative.

"*Subsistence*" means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

"*Take*" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal, including, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

"*Threatened species*" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"*Wasteful manner*" means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 55536, Dec. 21, 1976; 50 FR 49700, Dec. 4, 1985; 53 FR 8918, Mar. 18, 1988]

§ 216.4 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations.* See Subpart H of this part.

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship.

(c) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request

or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) of this section, unless otherwise provided by the Secretary.

(f) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(g) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(h) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976]

§ 216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the Act, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR Part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 50 FR 12785, Apr. 1, 1985]

§ 216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216 or in Part 228, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 47 FR 21254, May 18, 1982]

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this Part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, and sales.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

§ 216.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides, in effect, that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

> The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the Act. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

§ 216.15 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the Act.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

(c) North Pacific fur seal (*Callorhinus ursinus*). Pribilof Island population.

[53 FR 17899, May 18, 1988]

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such of-

ficial or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a)(1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidential catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel on a commercial fishing trip involving the utilization of purse seines to capture yellowfin tuna which is not operating under a category two general permit and certificates of inclusion, and which during any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear Category 2 operations, must not carry more than two speedboats.

(3) Upon written request in advance of entering the General Permit area, the limitation in (a)(2) may be waived by the Regional Director of the Southwest Region for the purpose of allowing transit through the General Permit area. The waiver will provide in writing the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Regional Director the vessel's date of exit from or subsequent entry to the permit area, in order to transit the area with more than two speedboats.

(b) *General permits.* (1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed or dragged gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear;

(ii) *Category 2: Encircling gear, pursue seining involving the intentional taking of marine mammals.*

Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category;

(iii) *Category 3: Encircling gear, pursue seining not involving the international taking of marine mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals;

(iv) *Category 4: Stationary gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets;

(v) *Category 5: Other gear.* Commerical fishing operations utilizing troiling, gill nets, hook and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), or (b)(1)(vi) of this section; and

(vi) *Category 6: Commercial passenger fishing vessel operation.* Commercial fishing operations from a commercial passenger fishing vessel for the purpose of active sportfishing as defined in § 216.3.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general, permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group of class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the Act, and the applicable regulations established under section 103 of the Act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the Act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and two copies of the application for general permit must be submitted to the Assistant Administrator. Applications should be received not less than 180 days prior to the date upon which the permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202-634-7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits may contain terms and conditions prescribed in accordance with section

104(b)(2) of the Act, 16 U.S.C. 1374(b)(2). General permits may be suspended, revoked, modified, or denied. Procedures governing permit sanctions or denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the FEDERAL REGISTER. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the FEDERAL REGISTER notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the FEDERAL REGISTER notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under § 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion*—(1) *Vessel certificates of inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided advance written notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's certificate of inclusion.* The person in charge of and actually controlling fishing operations (after this referred to as the operator) on a vessel engaged in commercial fishing operations for which a Category 2 or Category 6 general permit is required under this subpart, must be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on a vessel having a valid vessel certificate of inclusion for the same category. In order to receive a certification of inclusion, the operator must have satisfactorily completed required training. An operator's certificate of inclusion must be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, 5, and 6 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) *Fees.* (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories 1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; 5: Other gear; and 6: Commercial passenger fishing vessel—$10.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of $.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories, 1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; 5: Other gear; and 6: Commercial passenger fishing vessels—$1.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the FEDERAL REGISTER of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(8) Failure to comply with provisions of the general permit, certificate, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the Act. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals*—(i) *Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(*1*) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Dephinus delphis*) species; or

(*2*) Any other species or stock or marine mammals that does not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each calendar year by U.S. vessels in the course of commercial fishing operations will be limited to:

Quotas for each calendar year		Take	Encirclement	Mortality[1]
Species/stock	Management unit			
Spotted dolphin.	(northern offshore)[2].	16,570,000	10,338,000	20,500
Do	(southern offshore).	4,605,000	2,873,000	5,697
Do	(coastal)	202,000	126,000	[3] 250
Spinner dolphin.	(eastern)	2,222,000	1,386,000	[3]2,750
Do	(northern whitebelly).	1,205,000	699,000	5,321
Do	(southern whitebelly)[4].	568,000	329,000	2,506
Common dolphin.	(northern tropical)[5].	723,000	450,000	1,890
Do	(central tropical).	2,619,000	845,000	8,112
Do	(southern tropical).	1,306,000	421,000	4,045
Striped [illegible]	(northern [illegible]	28,000	21,000	429
Do	(central tropical).	118,000	69,000	1,822
Do	(southern tropical).	265,000	199,000	4,095

[1] The U.S. allowable mortality in any one year may not exceed 20,500.

[2] Fifty percent of replacement yield for the northern offshore spotted dolphin is 42,898; however, the maximum allowable mortality in any year is 20,500.

[3] Mortality level established by Pub. L. 98-364; not subject to flexible mortality schedule published in 46 FR 42068-42069 (August 19, 1981).

[4] Includes allowance for mixed species take.

[5] Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the FEDERAL REGISTER. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the FEDERAL REGISTER not less than seven days prior to the effective date.

(C) Except for the coastal spotted dolphin stock and the eastern spinner dolphin stock, if at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit is valid until surrendered by the permit holder or suspended or terminated by the Assistant Administrator provided the permittee and certificate holders under this part continue to use the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications must be consistent with and necessary to carry out the purposes of the Act. Any modifications proposed by the Assistant Administrator involving changes in the quotas will include the statements required by section 103(d) of the Act. Modifications will be proposed in the FEDERAL REGISTER and a public comment period will be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the FEDERAL REGISTER, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the Act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator will provide the requesting party or parties with his decision. If a request is denied, the Assistant Administrator will state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator will render a decision within 20 days from receipt of the notice.

(ii) *General conditions:* (A) Marine mammals incidentally taken must be immediately returned to the environment where captured without further injury. The operators of purse seine vessels must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailed or hoisted onto the deck during ortza retrieval.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "incidental catch" in § 216.3 of this part and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting requirements:* In accordance with § 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met:

(*1*) Unloads more than 400 tons of any species of tuna; or (*2*) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (*3*) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) A vessel having a vessel certificate issued under paragraph (c)(1) may not engage in fishing operations for which a general permit is required unless it is equipped with a porpoise safety panel in its purse seine, and has and uses the other required gear, equipment, and procedures.

(A) *Class I and II Vessels:* For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 19[illegible] the porpoise safety panel must be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips must be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of the corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(B) *Class III Vessels:* For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and, if present, the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(C) *Porpoise safety panel markers:* Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(D) *Porpoise safety panel hand holds:* Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1⅜" diameter cylindrical-shaped object meets resistance.

(E) *Porpoise safety panel corkline hangings:* Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1⅜" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1⅜" diameter cannot be inserted.

(F) *Speedboats:* Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(G) *Raft:* A raft suitable to be used as a porpoise observation-and-rescue platform shall be carried on all certificated vessels.

(H) *Facemask and snorkel, or viewbox:* At least two facemasks and snorkels, or viewboxes, must be carried on all certificated vessels.

(I) *Lights:* All certificated vessels shall be equipped by July 1, 1986, with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for porpoise release are carried out and to monitor incidental porpoise mortality.

(J) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel inspection:* (A) *Annual:* At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) *Reinspection:* Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) Upon failure to pass an inspection or reinspection, a vessel having a vessel certificate of inclusion issued under paragraph (c)(1) may not engage in fishing operations for which a general permit is required until the deficiencies in gear or equipment are corrected as required by an authorized National Marine Fisheries Service inspector.

(vi) *Operator training requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine mammal release requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) *Backdown procedure:* Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(B) *Prohibited use of sharp or pointed instrument:* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(C) *Use of Lights:* If the backdown maneuver or other release procedures continue one-half hour after sunset, the required lights must be used to allow full observation of the set and of procedures for porpoise release and to monitor incidental mortality.

(D) *Porpoise Safety Panel:* During backdown, the porpoise safety panel must be positioned so that it protects the perimeter of the backdown area.

The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. Any super apron must be positioned at the apex of the backdown channel.

(3) *Encircling gear, purse seining not involving the intentional taking of marine mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(4) *Stationary gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(5) *Other gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) [Reserved]

(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or injured by Japanese vessels operating in the U.S. EEZ is limited to an aggregate of 789 in the Bering Sea and 5250 in the North Pacific Ocean over the period 1987 to 1989, of which no more than 448 may be taken from the Bering Sea and no more than 2494 may be taken from the North Pacific Ocean in any single calendar year. The incidental take levels authorized by this subpart are reduced proportionately in the event that the Soviet Union reduces salmon quotas for 1988 or 1989 by more than 10 percent from the 1987 quota. Any permit issued under this part must indicate the measures by which the permit holder must comply with the conditions attached to the permit, and the reporting requirements of paragraph (d)(5)(v) of this section. Any permit issued under this part may allow retention of marine mammals for scientific purposes and will not require a separate permit under paragraph (d)(5)(iv) of this section.

(6) *Commercial passenger fishing vessels (CPFV)*. (i) A certificate holder aboard the vessel may take marine mammals so long as the taking is limited to harassment and is an incidental occurrence in the course of the active sportfishing subject to the following restrictions (paragraphs (d)(6) (ii) through (vi)).

(ii) Takings are prohibited within 500 yards of a pinniped rookery or haul-out site.

(iii) A certificate holder aboard the CPFV must use only those non-lethal, non-injurious methods not including capture as approved in advance by the Assistant Administrator for Fisheries through publication in the FEDERAL REGISTER and stipulated in the General Permit for taking marine mammals.

(iv) Takings are allowed only while engaged in active sportfishing to prevent imminent marine mammal approaches to the vessel or to protect a passenger's catch or gear from depredation or damage, without inflicting death or injury to any marine mammal.

(v) All operators must ensure the safe use of the approved methods for preventing marine mammal sportfishing interaction and must satisfactorily complete such training as may be required by the Assistant Administrator for Fisheries.

(vi) All certificate holders must maintain records of incidental take of marine mammals in such form as prescribed by the Assistant Administrator for Fisheries. All incidents involving harassment of marine mammals must be immediately recorded and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence. At a minimum, reports must include:

(A) The time, date, and location of the taking;

(B) The type of harassment device used, and the number used at each occurrence;

(C) The number and species of affected marine mammals; and

(D) A description of any behavioral changes noted that may be due to using the harassment device.

(e) *Importation*. (1) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen.

(2) The following fish and categories of fish, which the Assistant Administrator has determined may be involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the requirements of this subsection:

(i) *Yellowfin tuna.* The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States and which are subject to the restrictions of paragraphs (e)(3) and (e)(5) of this section:

110.10-20	Tuna; yellowfin, whole fish
110.10-25	Tuna; yellowfin, eviscerated, head on
110.10-30	Tuna; yellowfin, eviscerated, head off
110.10-37	Tuna; yellowfin, other
112.30-40	Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator
112.34-20	Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator
112.90-00	Tuna; canned, other, in oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator
113.56-65	Tuna; other, not in oil, prepared or preserved—except shipments of loins and discs marked other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(ii) *Salmon and halibut.* The following U.S. Tariff Schedule Item Numbers identify the categories of salmon and halibut products which are imported into the United States and are subject to the restrictions of paragraph (e)(4) of this section:

110.20-25	Halibut, fresh or chilled
110.20-30	Halibut, frozen
110.20-45	Salmon, fresh or chilled
110.10-50	Salmon, frozen
110.70-40	Halibut, other—except portion controlled steaks
111.48-00	Salmon, salted
111.88-00	Salmon, smoked or kippered
112.18-00	Salmon, preserved, not in oil

(3) *Yellowfin tuna.* (i) All shipments of tuna and tuna products listed in paragraph (e)(2)(i) of this section, from any nation, may not be imported into the United States unless a finding required in paragraph (e)(5) of this section has been made and unless accompanied by a separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1).

(ii) The Yellowfin Tuna Certificate of Origin must include the following information:

(A) Country of registry of the fishing vessels involved;

(B) Nation under whose laws a certified charter vessel is operating;

(C) Exporter (name and address);

(D) Consignee (name and address);

(E) Identity and quantity of the tuna to be imported, listed by U.S. Tariff Schedule Number;

(F) Name of vessel(s) which caught the yellowfin tuna;

(G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section; and

(H) A declaration signed either by a responsible government official of the country whose flag vessel or certified charter vessel caught the fish, the owner's representative, or the vessel master which states: "I certify that the above information is complete, true and correct to the best of my knowledge and belief."

(4) *Salmon and halibut.* All shipments of fish and fish products listed in paragraph (e)(2)(ii) of this section, from any nation, may not be imported into the United States unless the following conditions are met:

(i) The shipment is accompanied by a commercial invoice and/or a bill of lading indicating the following.

(A) Nation of registry of the fishing vessel(s) involved;

(B) Exporter (name and address);

(C) Consignee (name and address);

(D) Identity and quantity of the fish or fish products to be imported; *and*

(ii) The shipment is accompanied by a statement by a responsible official of the harvesting nation or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement will identify the species quantity, and exporter of the fish to which the statement refers, and be submitted at the time of importation; *or*

(iii) A responsible official of the harvesting nation may certify to the Assistant Administrator that all of its flag vessels are fishing in conformance with these regulations or that the fishing technology practiced by the harvesting nation with respect to the species of fish presented for importation into the United States does not result in deaths to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Upon receipt of a statement of conformance, the Assistant Administrator may then make a finding, and publish such finding in the FEDERAL REGISTER, that fish imports listed in paragraph (e)(2)(ii) of this section from the nation were not caught with commercial fishing technology which results in the incidental kill of marine mammals in excess of U.S. standards.

(5) *Yellowfin tuna.* (i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from nations whose flag vessels and certified charter vessels of 400 tons carrying capacity or greater operate in the ETP tuna purse seine fishery, as determined by the Assistant Administrator, may not be imported into the United States unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State and publishes the finding in the FEDERAL REGISTER that:

(A) The government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to the regulatory program of the United States; and

(B) The average rate of that incidental mortality by the vessels of the harvesting nation is determined comparable to the average rate of incidental mortality of marine mammals by U.S. vessels in the course of such harvesting. Upon such a finding, unloading will be allowed for the period of validity specified in the finding.

(ii) A harvesting nation which desires an initial finding under these regulations that will allow it to export to the United States those products listed in paragraph (e)(2)(i) of this section must submit by appropriate government official to the Assistant Administrator the information listed below 120 days before that nation wants to begin exportation of yellowfin tuna to the United States. The required information follows.

(A) A detailed description of the nation's regulatory and enforcement program governing incidental taking of marine mammals in the purse seine fishery for yellowfin tuna, including:

(*1*) A description, with copies of relevant laws, implementing regulations and guidelines, of the gear and procedures required in the fishery to protect marine mammals;

(*2*) A detailed description of the method (e.g., international or national observer records) by which the incidental mortality of marine mammals will be monitored; and

(*3*) A description of the methods used to identify problems and solutions to improve the performance of individual fishermen in reducing incidental mortality and how they will be advised.

(B) A list of its vessels and any certified charter vessels of 400 tons carrying capacity and greater which purse seined for yellowfin tuna at any time during the preceding two years in the ETP, indicating the status of each such vessel during that two year period (i.e. actively fishing in ETP, fishing in other waters; in port for repairs; inactive) and the status of each vessel expected to operate in the ETP in the year in which the submission is made.

(C) The best available data for the 1986 calendar year and any subsequent calendar year on the performance of its purse seine vessels (including certified charter vessels) fishing for tuna associated with marine mammals within the ETP including the following:

(*1*) Total number of tons of yellowfin tuna observed caught in each fishing area by purse seine sets on:

(*i*) Common dolphin and

(*ii*) All other marine mammal species;

(*2*) Total number of marine mammals observed killed in each area by purse seine sets on:

(*i*) Common dolphin and

(*ii*) All other marine mammal species;

(*3*) Number of observed trips and number of observed purse seine sets on marine mammals by the nation's purse seine fleet during the year;

(*4*) Total number of vessel trips and total number of purse seine sets on marine mammals by the nation's purse seine fleet during the year; and

(*5*) The number of observed purse seine sets in which more than 15 marine mammals were killed.

(D) A description of the source of the data requested in paragraph (e)(5)(ii)(C) of this section and, if from other than the Inter-American Tropical Tuna Commission, a description of the method used to obtain data on marine mammal mortality by species/stocks in sufficient detail to certify the authenticity and accuracy of the data.

(iii) The Assistant Administrator's determination on a nation's initial finding will be announced within 120 days of receipt of the information described in paragraph (e)(5)(ii) of this section and will be published in the FEDERAL REGISTER. A finding will be valid only for the calendar year for which it was issued.

(iv) A harvesting nation for which a positive finding under this section is in effect may request a renewal of such a finding for the subsequent calendar year by submitting, by the appropriate government official, to the Assistant Administrator the following information either by July 31 of the current year or for nations participating in the IATTC observer program, 14 days after the date the IATTC releases data on porpoise mortality, whichever is later:

(A) A description (with copies of relevant new laws, regulations and guidelines) of any changes in the regulatory program of that nation governing incidental taking of marine mammals in the yellowfin tuna purse seine fishery by its vessels and any certified charter vessels;

(B) Any changes in the number, names or status of vessels on the nation's list of vessels and certified charter vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining in the following year;

(C) Data required by paragraph (e)(5)(ii)(C) of this section for the preceding fishing year. A nation will be required to submit vessel performance data on any vessels leaving its fleet for that portion of the year that the vessel operated under its flag or as a certified charter vessel;

(D) A description of the actions taken by the nation in the previous year to achieve greater reductions in marine mammal mortality incidental to purse seining by its vessels or any certified charter vessels; and

(E) A statement of the source of the data requested in paragraph (e)(5)(ii)(C) of this section and, if from other than the Inter-American Tropical Tuna Commission, a description of the method used to obtain data on marine mammal mortality by species/stocks in sufficient detail to certify the authenticity and accuracy of the data.

(v)(A) The Assistant Administrator will make a positive finding or renew a positive finding for a harvesting nation if:

(*1*) The harvesting nation has provided all information required by paragraphs (e)(5)(ii) or (e)(5)(iv) of this section;

(*2*) The nation's regulatory program is comparable to the regulatory program of the United States as described in paragraphs (a), (b), (c), (d)(2), and (f) of this section;

(*3*) The data on marine mammal mortality submitted by the harvesting nation are determined to be accurate; and

(*4*) The average kill-per-ton rate for the longest period of time for which data are available, up to 5 years, or for the most recent year, whichever is lower, does not exceed the U.S. kill-per-ton rate for the same period by the amount specified in paragraph (e)(5)(v)(D) of this section below.

(B) During an initial five-year baseline period (1986-90), the Assistant Administrator will not make a negative finding based on the kill-per-ton rate because adequate data are not available. However, the annual kill-per-ton rate for nations must demonstrate a negative trend in order for a nation to retain a positive finding. A negative trend will be assessed by fitting a line to the annual kill-per-ton rates for the years after 1985 and determining the slope of the line. If the U.S. kill-per-ton rate increases during this period, the rate for harvesting nations can increase in proportion to the U.S. rate. However, if the annual kill-per-ton rate for any nation does not decline or remain proportional with any increase in the U.S. rate, after 1988 the Assistant Administrator will issue a negative finding unless, after a review of the nation's explanation of the causes and actions taken, the Assistant Administrator determines that the actions taken are likely to sustain a reduction of marine mammal mortality in the future. In conducting the review, the Assistant Administrator will request specific details concerning the actions taken to identify and counsel individual skippers whose performance is unsatisfactory and to handle any other specific factors causing the high mortality rates.

(C)(*1*) After 1990, those harvesting nations having purse seine vessels of 400 tons carrying capacity or greater that harvest yellowfin tuna in the ETP and whose vessels have observer data for at least five (5) trips and 100 sets per year must have an average mortality rate which is no more than 25 percent greater than the U.S. average.

(*2*) Harvesting nations having purse seine vessels of 400 tons carrying capacity or greater that harvest yellowfin tuna in the ETP and whose vessels have observer data for fewer than five (5) trips and 100 sets per year are recognized as likely to experience greater variation in their kill-per-ton rates due to the small number of sets observed during a year. These nations must have an average mortality rate which is no more than 75 percent greater than the U.S. average.

(D) A nation's average mortality rate will be compared with the U.S. mortality rate which is weighted to account for dissimilar amounts of fishing activities between the two nations in the three ETP fishing areas and for the two species groups.

(E) The Assistant Administrator will consider an explanation of special circumstances, submitted by a harvesting nation with a request for a finding, describing reasons and actions taken to mitigate marginal performance and unusually high rates of marine mammal mortality.

(vi) The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator may reconsider a finding upon a request from and the submission of additional information by the harvesting nation.

(vii)(A) Any finding in effect on the date the interim final rule becomes effective will terminate without further notice 180 days after that date unless the Assistant Administrator has received within 120 days of that date a valid, signed and substantially complete application for a new finding in which case the existing finding will remain in effect until the Assistant Administrator's decision is announced.

(B) The time limits specified in paragraphs (e)(5) (ii) and (iii) of this section do not apply to a harvesting nation that applies in a timely manner for a new finding under paragraph (e)(5)(vii)(A) of this section.

(C) Paragraph (e)(5)(vii) of this section is effective only until September 1, 1989.

(6) *Fish refused entry.* If fish is denied entry under the provisions of § 216.24(e)(3) or (e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* That fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or

consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if:

(i) The required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or

(ii) The required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atomspheric Administration, Department of Commerce, Washington, DC 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entery under § 216.24(e)(3) or (e)(4) or which is redelivered in accordance with § 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided however,* That any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(9)(i) *Restrictions on yellowfin and bigeye tuna imports.* No yellowfin or bigeye tuna harvested by a purse seine vessel fishing on porpoise in the eastern tropical Pacific Ocean (the "ETP") during the period that such fishing is prohibited for vessels of the United States under § 216.24(a)(4)(i) in 1986, may be imported into the United States. Any tuna harvested in the ETP before the closure date must be placed in a bonded warehouse, aboard a common carrier, or aboard a vessel in port awaiting to unload before the closure date in order to be imported into the United States after the closure date.

(ii) *Definitions for purposes of § 216.24(e)(9).* (A) "Closure date" means the date on which the allowable quota on incidental mortality permitted under the general permit will be reached as announced under the provisions of § 216.24(d)(2)(i)(B).

(B) "Closure period" means a period beginning on the closure date and ending on December 31, 1986, during which United States purse seine vessels are prohibited from catching tuna by setting on porpoise.

(C) "ETP" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude, and the coastline of North, Central, and South America.

(D) "NMFS" means the National Marine Fisheries Services, National

Oceanic and Atmospheric Administration, Department of Commerce.

(iii) *Authorization required for yellowfin and bigeye tuna imports.* Any yellowfin or bigeye tuna harvested by a vessel of a country for which the Assistant Administrator has made a finding under paragraph (e)(5)(i) of this section, that is offered for importation between the closure date and June 30, 1987, must be accompanied by a letter of authorization from NMFS.

(iv) *Procedure to obtain letter of authorization.* Any person desiring to obtain a letter of authorization from NMFS to allow the importation of yellowfin or bigeye tuna must submit to the Regional Director, NMFS, 300 S. Ferry Street, Terminal Island, California 90731, a declaration signed by a responsible government official of the country whose flag vessel caught the tuna, that the tuna being offered for importation was not taken by fishing on porpoise during the closure period. The declaration of the responsible government official must include the information listed in either paragraph (e)(9)(iv) (A), (B), (C), (D), or (E) of this section, as appropriate.

(A) If the tuna to be imported was taken on a fishing trip any part of which was in the ETP during the closure period, the declaration must include the following information:

(*1*) The name of the vessel(s) which harvested the tuna,

(*2*) The date of the trip(s) on which the tuna was harvested,

(*3*) A statement that the vessel carried an observer approved by the government on every portion of the trip that occurred after the closure date, and

(*4*) A statement that the observer certified that no tuna was harvested by fishing on porpoise after the closure date.

(B) If the tuna to be imported was taken on a fishing trip in the ETP that ended before the closure date, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) The dates of the trip(s) on which the tuna was harvested, and one of the following sets of information:

(*i*) The date the tuna arrived in port, the date when the tuna was placed in a bonded warehouse, the date the tuna was removed from the bonded warehouse, and the name and address of the bonded warehouse. Documentation establishing that the tuna was in port on the closure date and documentation from the bonded warehouse that shows the dates that the tuna was placed into the warehouse and taken out of the warehouse must accompany the declaration.

(*ii*) The date the tuna arrived in port, the date when the tuna was placed on a common carrier for shipping, and the name and address of the common carrier for shipping, and the name and address of the common carrier. Documentation establishing that the tuna was in port on the closure date and documentation from the common carrier that shows the date(s) that the tuna was placed aboard the carrier must accompany the declaration.

(*iii*) The date the tuna arrived in port, awaiting unloading, the date the vessel is schedule for unloading, the intended disposition of the tuna (i.e., common carrier, bonded warehouse, offloading in Puerto Rico, Venezuela, etc.) and documentation from a port official verifying the arrival date of the vessel.

(C) If the tuna to be imported was taken by fishing on porpoise on a fishing trip that began after the closure period ends, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) The dates of the trip(s) on which the tuna was harvested, and

(*3*) The location of the harvest.

(D) If the tuna to be imported was taken on a fishing trip on which the vessel was not in the ETP for any portion of the trip, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) The dates of the trip(s) on which the tuna was harvested, and

(*3*) The areas in which the vessel(s) was during the trip(s) (e.g., the western Pacific Ocean).

(E) If the tuna to be imported was taken in part or entirely by tuna purse seine vessels of 400 short tons carrying capacity or less, (and any remaining tuna was not caught by tuna purse seine vessels of larger than 400 short tons) the declaration must include the following information:

(*1*) The name(s) of the vessel(s) which caught the tuna;

(*2*) The carrying capacity in short tons of the(se) vessel(s); and

(*3*) the quantity of tuna being imported that was caught by the(se) vessel(s).

(v) *Disposition of tuna not accompanied by required documentation.* (A) Tuna that requires a letter of authorization under paragraph (e)(9)(iii) of this section that is offered for importation without the required letter of authorization must be either—

(*1*) Exported under Customs supervision within 60 days,

(*2*) Placed into a bonded warehouse, or

(*3*) Disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

(B) The importer will remain liable for any expenses incurred in the storage and/or disposal of tuna refused admission under these regulations. If, within 60 days of fish being placed into a bonded warehouse, the District Director of Customs receives appropriate documentation for that fish, the fish will be allowed to be entered into the United States, otherwise it will be disposed of as set forth in paragraph (e)(9)(v) (A) of (C) of this section.

(f) *Observers.* (1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed $2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(Approved by the Office of Management and Budget under control numbers 0648-0083 for paragraphs (b) and (c), 0648-0085 for paragraph (d), and 0648-0040 for paragraph (e) of this section)

[45 FR 72187, Oct. 31, 1980, as amended at 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984; 49 FR 46909, Nov. 29, 1984; 50 FR 49701, Dec. 4, 1985; 51 FR 201, 202, Jan. 3, 1986; 51 FR 40172, Nov. 5, 1986; 52 FR 19880, May 28, 1987; 53 FR 8918, Mar. 18, 1988]

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term "ocean" includes bays and estuaries.

(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the Bureau of Sport Fisheries and Wildlife.

(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.

(d) Title to any marine mammal parts collected under this section is not transferable unless consented to, in writing, by the Secretary.

Subpart D—Special Exceptions

§ 216.31 Scientific research permits and public display permits.

(a) The Director may issue permits authorizing the taking and importing of marine mammals for scientific research and public display except that no display permits will be issued for marine mammals from a species listed as depleted under § 216.15 of this part. Any person desiring to obtain such a permit may make application therefore to the Secretary. The sufficiency of the application shall be determined by the Secretary and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether scientific research or a public display permit should be issued by the Secretary of Commerce. The Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will review all completed applications submitted to them by the Secretary pursuant to paragraph (b) of this section (39 FR 1851, January 15, 1974.) An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Assistance may be obtained by writing the Director or calling the Law Enforcement and Marine Mammal Protection Division in Washington, DC (area code 202), phone number 343-7780. In preparing an application for a scientific research or public display permit, provide the following information:

(1) Title: As applicable, either—

(i) Application for Public Display Permit Under the Marine Mammal Protection Act of 1972, or

(ii) Application for Scientific Research Permit Under the Marine Mammal Protection Act of 1972.

(2) List the date of the application.

(3) If the Applicant is a partnership or a corporate entity set forth the details. If the marine mammal to be taken or imported, or the marine mammal product to be imported, is to be utilized or displayed by a party other than the Applicant, set forth the name of the party and such other information as would be required if such party were an Applicant.

(4) Provide a statement on the purpose of the proposed taking or importing, including a brief description of:

(i) The need for the marine mammal(s) and/or marine mammal product(s); and

(ii) How they will be used.

(5) If the application is for a scientific research permit, provide the following additional information:

(i) A detailed description of the scientific research project or program in which the marine mammal or product thereof is to be used, including the period of time over which the research will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed research has broader significance than the individual researcher's goals (i.e., does the proposed research respond directly or indirectly to recommendations of any national or international scientific body charged with research or management of marine mammals and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continual benefit to science, in a museum or other institutional collection.

(6) Describe any marine mammals to be taken or imported, whether for public display or scientific research or any marine mammal products to be imported, including the following:

(i) A list of each species to be taken or imported and the number of each, including the common and scientific name;

(ii) A physical description of each animal to be taken or imported, including the age, size, and sex;

(iii) A list of the probable dates of capture and importation for each animal and the location of capture and importation, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each marine mammal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture the animals;

(vii) If the capture is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture the animals, should a permit be granted;

(viii) In the case of imported animals, indicate, if known, the management and protection programs of the country from which the animal originates; and

(ix) For any marine mammal products to be imported, provide the information sought in this paragraph for all marine mammals from which component parts of such products are derived.

(7) Describe the manner of transportation of any marine mammal taken or imported, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the research or display facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any mammals sought, including a complete description of the facilities where any such mammals will be maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the wellbeing of the animal.

(9) If the application is for public display, provide a detailed description of the proposed display, including:

(i) A description of the manner, location, and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of the numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated dipslay; and

(v) A description of the Applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(10) If the marine mammal to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969 or any Act superseding it, or has been designated by the Secretary as depleted, or if the marine mammal product to be imported is composed in whole or in part from such mammal, provide a detailed justification of the need for such mammal(s), or product(s) including a discussion of possible alternatives, whether or not under the control of the Applicant. Please note that pursuant to the Act and interim regulations that no public display permits may be issued for such endangered or depleted species.

(11) For the year preceding the date of this application, provide a detailed description of all marine mammal mortalities, including:

(i) A list of all marine mammals captured, transported, maintained, displayed, or utilized for scientific research and/or for all marine mammals caused to be captured, transported, maintained, displayed, or utilized for scientific research, by the Applicant.

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by the Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972.

(13) The applicant must sign the application.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Except as provided in Subpart D of 15 CFR Part 904, permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 39 FR 14348, Apr. 23, 1974; 41 FR 30120, July 22, 1976; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984]

§ 216.32 [Reserved]

§ 216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the Federal Register. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefore; and

(2) The steps which the Permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice or such other date as may be specified in the notice by the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 48 FR 57302, Dec. 29, 1983]

§ 216.34 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart E—Designated Ports

§ 216.40 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR Part 14.

(b) For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.
Los Angeles, Calif.
New Orleans, La.
Seattle, Wash.
Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

Alaska—Juneau, Anchorage, Fairbanks
Hawaii—Honolulu
Puerto Rico—San Juan
Guam—Honolulu, Hi.
American Samoa—Honolulu, Hi.
Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR Part 14 for importation requirements and information.

Subpart F—[Reserved]

Subpart G—Notice and Hearing on Section 103 Regulations

SOURCE: 40 FR 10183, Mar. 5, 1975, unless otherwise noted.

§ 216.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), 1371(b) (1972)) of the Act and these regulations authorize the Director, National Marine Fisheries Service, to (1) impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Director to section 103 (16 U.S.C. section 1373 (1972)). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A) (1972)).

(b) The purpose of this subpart is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d).

§ 216.71 Definitions.

Definitions shall be the same as in Subpart A of this part except as follows:

(a) "Party" means, for the purposes of this subpart:

(1) The Director or his representative;

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 216.74 and 216.83(b).

(b) "Witness" means, for the purposes of this subpart, any person who submits written direct testimony on the proposed regulations.

A person may be both a party and a witness.

§ 216.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section

103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. section 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 216.73 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the prehearing conference.

§ 216.74 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice.

§ 216.75 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 216.73, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Director.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 216.76 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 216.73), the final hearing agenda (§ 216.81), or within 15 days after the conclusion of the prehearing conference (§ 216.83) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 216.77 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, National Marine Fisheries Service, Washington, DC 20235. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 216.78 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, National Marine Fisheries Service, Washington, DC 20235—unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 216.79 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 216.80 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 216.76, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 216.73(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 216.81 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the FEDERAL REGISTER within ten days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 216.82 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Director shall then make a final decision in accordance with these regulations (§ 216.90).

§ 216.83 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 216.73:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 216.74; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 216.76.

§ 216.84 Waiver of right to participate.

Persons who fail to notify the Director pursuant to § 216.74 and § 216.83 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 216.85 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: *Provided,* That if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent notices published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Director if made thereafter.

§ 216.86 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination

shall be by a party whose interests are adverse on the issue presented, to the witness', if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: *Provided*, That parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 216.87 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Director's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 216.88 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 216.89 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Director shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Director, National Marine Fisheries Service, Washington, DC 20235.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the twenty-day period to the Director at the above address.

§ 216.90 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(c) The Director's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

Subpart H—Transfer of Management Authority to States

NOTE: Regulations governing the transfer of management authority to States pursuant to section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of Commerce are found at Part 403 of this title, see 48 FR 22456, May 18, 1983.

Subpart I—Waiver of the Moratorium on Taking of Marine Mammals

AUTHORITY: Secs. 103 and 109 of the Marine Mannal Protection Act of 1972, as amended (16 U.S.C. 1373 and 1379).

SOURCE: 44 FR 2553, Jan. 11, 1979, unless otherwise noted.

EFFECTIVE DATE NOTE: At 44 FR 2553, Jan. 11, 1979, Subpart I was added to Part 216, effective when the Administrator determines (in accordance with section 109(a)(2) of the Marine Mammal Protection Act of 1972, and 50 CFR Part 216, Subpart H) that Alaskan laws and regulations are consistent with the Act.

§ 216.110 Purpose of regulations.

Pursuant to section 103 of the Act, the regulations contained in this subpart insure that the taking of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disadvantage of any species or population stock.

§ 216.111 Scope.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Administrator has made a decision to effect a waiver and allow taking such species or population stocks pursuant to section 101(a)(3)(A) of the Act; and (2) a State has adopted and submitted to the Administrator laws and regulations relating to the protection and taking of such species and population stocks and the Administrator has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and Subpart H of this part.

(b) The provisions of this subpart, unless specifically stated otherwise, apply to all taking of marine mammals by U.S. citizens and residents in Alaska and the waters off Alaska.

(c) The provisions of this subpart do not apply to nonlethal scientific research or public display, which shall be permitted in accordance with § 216.31, and incidental taking by foreign persons or foreign vessels, which shall be permitted in accordance with § 216.24.

§ 216.112 Definitions.

For purposes of this part:

(a) "Alaska" means all lands and waters within the seaward boundary of the State of Alaska;

(b) "Foreign person" means any person who is not a U.S. citizen or resident; "foreign vessel" means any vessel other than a vessel documented or certificated under U.S. laws.

(c) "Lethal scientific research" means scientific research in which the subject mammal is killed or seriously injured.

(d) "Pup" refers to a marine mammal which is born in the year in which it is taken in a commercial harvest.

(e) The term "Waters off Alaska" means waters outside Alaska and west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 216.113 Taking of seals, sea lions and Beluga Whales (Alaska).

(a) Pursuant to section 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium and other requirements of section 101(a) of the Act are waived to allow the kinds of taking described in § 216.111(b) up to the following amounts on an annual, calendar year basis effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to § 216.104(d).

Species	Annual taking limit on mortality and serious injury
Northern (Steller), Sea Lion (*Eumetopias jubatus*)	[1] 6,648
Harbor Seal (*Phoca vitulina*)	[1] 10,511
Largha Seal (*Phoca largha*)	5,700
Ribbon Seal (*Histriophoca vasciata*)	500
Ringed Seal (*Pusa hispida*)	20,000
Pacific Bearded Seal (*Enignatha barbatus*)	[2] 9,000
Beluga Whale (*Delphinapterus leucas*)	10
Cook Inlet stock, Bering-Chukchi Sea stock	350

[1] Two (2) pups may be taken in lieu of one adult, but only in commercial harvests and in accordance with age restrictions established by the State of Alaska. In accordance with 50 CFR 216.112(d), the State can allow only animals born in the year in which they are taken to qualify as pups.

[2] To be measured by the landing and taking ashore of 3,000 animals.

(b) The State of Alaska must insure that for each species and population stock, no more than the number of animals set forth in paragraph (a) of this section are taken annually.

(c) All takings of marine mammals allowed by § 216.111(b) and § 216.113(a) and all related activities shall be conducted in accordance with the applicable laws and regulations of the State of Alaska and the United States.

(d) The takings of marine mammals allowed by §§ 216.111(b) and 216.113(a) shall be duly licensed or otherwise authorized in writing as follows:

(1) *Alaska citizens and residents (including resident aliens).* All subsistence, direct, incidental, and lethal scientific research taking in Alaska and the waters of Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska;

(2) *Non-Alaskan-U.S. citizens, residents, and resident aliens.* (i) All direct and incidental taking, and lethal scientific research in Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska; (ii) if such takings occur in the waters off Alaska, they shall be permitted in accordance with the laws and regulations of the United States.

(3) With respect to all permit applications for taking in the waters off Alaska under paragraph (d)(2)(ii) of this section, the Assistant Administrator for Fisheries, NOAA, shall consult

with appropriate officials of the State of Alaska prior to issuing any permits.

(4) The State of Alaska shall consult with the Assistant Administrator for Fisheries, NOAA, prior to issuing any lethal scientific research permits under paragraphs (d)(1) and (d)(2) of this section.

(e) Whenever the taking of any species or population stock during any calendar year reaches, or is likely to reach 90 percent of the annual taking limit under paragraph (a) of this section, the Administrator shall be notified pursuant to § 216.107. After notification, the State of Alaska must take appropriate steps to insure that the annual waiver limit is not exceeded, including, if necessary, an immediate termination of any taking under its control. If the State of Alaska does not take such appropriate steps, the Administrator as he deems appropriate, by notice to the State of Alaska and publication in the FEDERAL REGISTER, shall suspend and terminate any takings authorized by the State of Alaska for the calendar year in question.

(f) Whenever any species or population stock diminishes or is likely to diminish below its optimum sustainable population, or if the State of Alaska does not preserve the purposes and policies of the Act, or maintain optimum sustainable population and a healthy ecosystem, the Administrator shall by notice to the State of Alaska and publication in the FEDERAL REGISTER reimpose the moratorium on the taking of such affected species or population stock provided by section 101(a) of the Act.

(g) No marine mammal or product thereof taken under this section may be removed from Alaska or the waters off Alaska unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product or container until the final stages of processing.

(h) For those persons or vessels subject to Alaskan jurisdiction, any violation of the laws and regulation of the State of Alaska applicable to the taking of marine mammals, committed in the waters off Alaska, shall be a violation of 50 CFR Part 216, Subpart I. For those persons or vessels not subject to the jurisdiction of the State, any violation of these regulations in Alaska and the waters off Alaska may be punished in accordance with the procedures and penalties of sections 105, 106, and 107 of the Act and the regulations in this part.

(i) In accordance with paragraph (d)(2)(ii) of this section, the Administrator, after consultation with the State of Alaska, may issue permits to non-Alaskan, U.S. citizens authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

(1) Name and address of applicant;

(2) Month and year of taking;

(3) Identity of the marine mammal and the quantity to be taken;

(4) Proposed location of taking;

(5) Method of taking;

(6) Proposed disposition of parts and products and method of shipment;

(7) The following certification:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefits of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

and

(8) Signature of the applicant;

(j) Permits applied for under paragraph (i) of this section shall be terminated by reimposition of the moratorium or any closure of a season by the State of Alaska.

(k) Permits issued under paragraph (i) of this section shall contain such terms and conditions as the Administrator may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations, and with the applicable provisions of Alaska's approved laws and regulations and shall include:

(1) The number of animals which are authorized to be taken;

(2) The location from which they may be taken;

(3) The method of taking;

(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;

(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and

(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. In no event will the cost be less than the fee for the comparable non-resident license or permit issued by the State of Alaska.

PART 217—GENERAL PROVISIONS

Subpart A—Introduction

Sec.
217.1 Purpose of regulations.
217.2 Scope of regulations.
217.3 Other applicable laws.
217.4 When regulations apply.

Subpart B—Definitions

217.12 Definitions.

Subpart C—Addresses

217.21 Assistant Administrator.
217.22 Office of Marine Mammals and Endangered Species.
217.23 Enforcement Division.

AUTHORITY: 16 U.S.C. 1521-1543; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

Subpart A—Introduction

§ 217.1 Purpose of regulations.

The regulations of Parts 216 through 227 are promulgated to implement the following statutes enforced by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife.

(Endangered Species Act of 1973, section 11(f), 87 Stat. 884, Pub. L. 93-205; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-1)

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

§ 217.2 Scope of regulations.

The various provisions of Parts 216 through 227 of this chapter are interrelated, and particular note should be taken that the parts must be construed with reference to each other. The regulations in Parts 216 through 227 apply only for fish or wildlife under the jurisdictional responsibilities of the Secretary of Commerce for the purpose of carrying out the Endangered Species Act of 1973 (see Part 222, § 222.23(a)). Endangered species of fish or wildlife other than those covered by these regulations are under the jurisdiction of the Secretary of the Interior. For rules and procedures relating to such species, see 50 CFR Parts 10 through 17.

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

§ 217.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in Parts 216 through 227 of this chapter. In addition, nothing in Parts 216 through 227 of this chapter, nor any permit issued under Parts 217 through 228 of this chapter, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other National Marine Fisheries Service enforced statutes or regulations.

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

§ 217.4 When regulations apply.

The regulations of Parts 216 through 227 of this chapter shall apply to all matters, including the processing of permits, arising after the effective date of such regulations, with the following exception:

(a) *Civil penalty proceedings.* Except as otherwise provided in § 218.25, the civil penalty assessment procedures contained in Parts 216 through 227 of this chapter shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

Subpart B—Definitions

§ 217.12 Definitions.

"Act" means the Endangered Species Act of 1973 as amended (Pub. L. 93-205).

"Assistant Administrator" means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized representative.

"Atlantic Area" means all ocean and tidal waters off the southeast Atlantic States from 36°33'00.8"N. latitude (North Carolina or Virginia border) south and west to a line at 81°W. longitude, except for waters within the Canaveral Area, as defined in this section.

"Authorized officer" means (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; (2) any certified enforcement officer of the National Marine Fisheries Service; (3) any officer designated by the head of any Federal or State agency that has entered into an agreement with the Secretary and Commandant of the Coast Guard to enforce provisions of the Act; (4) any Coast Guard personnel accompanying and acting under the direction of any person described in subparagraph (1) of this definition.

"Canaveral Area" means all ocean and tidal waters off the east coast of Florida between 28°N. latitude and 29°N. latitude.

"Commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

"Country of exportation" means the last country from which the animal was exported before importation into the United States.

"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.

"Fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

"Foreign commerce" includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

"Gulf Area" means all ocean and tidal waters in the Gulf of Mexico except the southwest Florida Area, as defined in this section.

"Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

"Inshore" means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR Part 80.

"Length" in reference to a shrimp trawler, means the distance from the

tip of the vessel's bow to the tip of its stern.

"*Offshore*" means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR Part 80.

"*Permit*" or "*Certificate of exemption*" means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any permit or certificate of exemption.

"*Person*" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

"*Possession*" means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

"*Pre-Act endangered species part*" means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973 in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"*Scrimshaw product*" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving or carving.

"*Secretary*" means the Secretary of Commerce or his authorized representative.

"*Shrimp*" means the following species of the order Crustacea:

(1) Brown shrimp (*Penaeus aztecus*).

(2) White shrimp (*P. setiferus*).

(3) Pink shrimp (*P. duorarum*).

(4) Rock Shrimp (*Sicyonia breavirostris*).

(5) Royal red shrimp (*Hymenopenaeus robustus*).

(6) Seabob shrimp (*Xiphopenaeus kroyeri*).

"*Shrimp trawler*" means any fishing vessel which is equipped with trawl nets and fishes for shrimp, or whose on-board or landed catch of shrimp is over one percent by weight of all fish on board.

"*Southwest Florida Area*" means the ocean and tidal waters off Florida from 23°40′ N. Latitude to 27° N. latitude between 81° W. longitude and 84° W. longitude.

"*State*" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"*Take*" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

"*Tow time*" means the interval from trawl doors entering the water to trawl doors being removed from the water.

"*Transportation*" means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

"*United States*" means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"Whoever" means the same as person.

"Wildlife" means the same as fish or wildlife.

(Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540))

[45 FR 57132, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985; 52 FR 24250, June 29, 1987; 52 FR 37153, Oct. 5, 1987]

Subpart C—Addresses

AUTHORITY: Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540).

SOURCE: 45 FR 57133, Aug. 27, 1980, unless otherwise noted.

§ 217.21 Assistant Administrator.

Mail forwarded to the Assistant Administrator for Fisheries should be addressed:

Assistant Administrator for Fisheries, F
National Marine Fisheries Service
Washington, DC 20235.

§ 217.22 Office of Marine Mammals and Endangered Species.

Mail in regard to permits should be addressed to:

Office of Marine Mammals and Endangered Species, F/MM
National Marine Fisheries Service
Washington, DC 20235.

§ 217.23 Enforcement Division.

Mail in regard to enforcement and certificates of exemption should be addressed to:

Enforcement Division, F/CM5
National Marine Fisheries Service
Washington, DC 20235.

PART 220—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

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220.1 General.
220.2 Purpose of regulations.
220.3 Scope of regulations.
220.4 Emergency variation from requirements.

Subpart B—Application for Permits

220.11 Procedure for obtaining a permit.
220.12 [Reserved]
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Subpart C—Permit Administration

220.21 Issuance of permits.
220.22 Duration of permit.
220.23 [Reserved]
220.24 Renewal of permit.
220.25 Permits not transferable; agents.
220.26 Right of succession by certain persons.
220.27 Change of mailing address.
220.28 Change in name.
220.29—220.30 [Reserved]
220.31 Discontinuance of activity.

Subpart D—Conditions

220.42 Permits are specific.
220.43 Alteration of permits.
220.44 Display of permit.
220.45 Filing of reports.
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Subpart E—Permits Involving Endangered or Threatened Sea Turtles

220.50 Purpose.
220.51 Permit applications.
220.52 Issuance of permits.
220.53 Other requirements.

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205; act of August 31, 1951, Ch. 376. Title 5, sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

SOURCE: 39 FR 41373, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 220.1 General.

Each person intending to engage in an activity for which a permit is required by Parts 217 through 222 of this chapter or the Endangered Species Act of 1973 shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by Parts 217 through 222 of this chapter must make application for such permit in accordance with the requirements of this Part 220 of this chapter and the other regulations in Parts 217 through 222 of this chapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of Parts 217 through 222 of this chapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

§ 220.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to Parts 217 through 222 of this chapter.

§ 220.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of Parts 217 through 222 of this chapter and apply to all permits issued thereunder, including "Endangered Fish or Wildlife" (Part 222).

§ 220.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of Parts 217 through 222 of this chapter, and will not be unlawful.

Subpart B—Application for Permits

§ 220.11 Procedure for obtaining a permit.

The following general procedures apply to applications for permits:

(a) *Forms.* Applications must be submitted by letter containing all necessary information, attachments, certification, and signature. In no case will oral or telephone applications be accepted.

(b) *Forwarding instructions.* Applications must be submitted to the Director, National Marine Fisheries Service. The address is listed in § 217.21.

(c) *Time requirement.* Applications must be received by the appropriate official of the National Marine Fisheries Service at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective. The National Marine Fisheries Service will, in all cases, attempt to process applications deemed sufficient in the shortest possible time. The National Marine Fisheries Service does not, however, guarantee 90 days issuance after publication in the FEDERAL REGISTER of receipt of a permit application and some permits cannot be issued within that time period.

§ 220.12 [Reserved]

§ 220.13 Abandoned application.

Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

Subpart C—Permit Administration

§ 220.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 220.4 is inserted into the official file of the National Marine Fisheries Service. Any representation of an employee or agent of the United States Government shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 217.12.

(b) The Director shall issue the appropriate permit unless—

(1) Denial of a permit has been made pursuant to Subpart D of 15 CFR Part 904;

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any permit request, and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application. The final action by the Director shall be considered the final administrative decision of the Department.

[39 FR 41373, Nov. 27, 1974, as amended at 49 FR 1042, Jan. 6, 1984]

§ 220.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in Parts 217 through 222 of this chapter for the period stated on the permit, unless sooner modified, suspended, or revoked pursuant to Subpart D of 15 CFR Part 904.

[49 FR 1042, Jan. 6, 1984]

§ 220.23 [Reserved]

§ 220.24 Renewal of permit.

Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise notified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon.

§ 220.25 Permits not transferable; agents.

(a) Permits issued under Parts 220 through 222 are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 220.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 220.26 Right of succession by certain persons.

(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 220.27 Change of mailing address.

During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained.

§ 220.28 Change in name.

A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree: *Provided*, That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

§§ 220.29—220.30 [Reserved]

§ 220.31 Discontinuance of activity.

When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

Subpart D—Conditions

§ 220.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

§ 220.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

§ 220.44 Display of permit.

Any permit issued under Parts 220 through 222 shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 220.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of Parts 217 through 222 of this chapter or the provisions of the permit set forth other reporting requirements.

§ 220.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

§ 220.47 Inspection requirement.

Any person holding a permit under Parts 217 through 222 of this chapter shall allow the Director's agent to enter his premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of Parts 217 through 222 of this chapter or by the Endangered Species Act of 1973.

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted.

§ 220.50 Purpose.

This subpart establishes procedures for issuance of permits for scientific purposes or to enhance the propagation or survival of "endangered" or "threatened" sea turtles and zoological exhibition or educational purposes for "threatened" sea turtles.

§ 220.51 Permit applications.

Applications for permits to take, import, export or engage in any other prohibited activity involving any species of sea turtle listed in 50 CFR 17.11 shall be submitted to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either, 50 CFR 17.22(a) (Endangered Species) or 50 CFR 17.32(a) (Threatened Species) as appropriate. Applications involving activities under the jurisdiction of the National Marine Fisheries Service (NMFS) as defined in 50 CFR 222.23(a) and 50 CFR 227.4 shall be forwarded by the WPO to NMFS.

§ 220.52 Issuance of permits.

(a) Applications under the jurisdiction of the WPO shall be reviewed and acted upon in accordance with 50 CFR 17.22 or 50 CFR 17.32 as appropriate.

(b) NMFS shall make a complete review of applications forwarded to it by the WPO in accordance with § 220.51 and determine the appropriate action to be taken in accordance with 50 CFR 220.21(b) and 222.23(c). In instances where the application involves activities solely within NMFS jurisdiction, NMFS shall issue permits or letters of denial and provide WPO with copies of its actions.

(c) Where a permit application involves activities under both NMFS and FWS jurisdiction, each agency will process the application for activities under its jurisdiction. WPO will issue either a permit or a letter of denial.

(d) Where a permit application for activities under NMFS jurisdiction also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249, July 1, 1975) (CITES) (50 CFR Part 23), NMFS will process the application for activities under its jurisdiction. WPO will issue the final document by means of a combination ESA/CITES permit or a letter of denial.

§ 220.53 Other requirements.

Permits issued by NMFS under this Subpart shall be administered and comply with the provisions of 50 CFR Parts 217 through 227 as appropriate.

PART 221—DESIGNATED PORTS

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205.

§ 221.1 Importation and exportation at designated ports.

Any fish or wildlife (other than shellfish and fishery products which (a) are not endangered or not threatened species, and (b) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for other reasons if he deems it appropriate and consistent with the purpose of facilitating enforcement of the Endangered Species Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR Part 14 for importation and exportation requirements and information.

[39 FR 41375, Nov. 27, 1974]

PART 222—ENDANGERED FISH OR WILDLIFE

Subpart A—Introduction

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222.2 Scope of regulations.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

222.11-1 General certificate of exemption requirements.
222.11-2 Application renewal procedure.
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222.11-4 Procedures for issuance of renewals of certificates of exemption.
222.11-5 Application for modification of certificate of exemption by holder.
222.11-6 Amendment of certificates of exemption.
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222.11-8 Purchaser provisions.
222.11-9 Duration of certificate of exemption.
222.12 Locations covered by certificate of exemption.
222.12-1 Certificate of exemption not transferable; exception.
222.12-2 Change of address.
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222.12-9 Importation.
222.13 Exportation.
222.13-1 Procedure by exporter.
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222.13-4 Burden of proof; presumption.

Subpart C—Endangered Fish or Wildlife Permits

222.21 General permit requirement.
222.22 [Reserved]
222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.
222.24 Procedures for issuance of permits.
222.25 Applications for modification of permit by permittee.
222.26 Amendment of permits by NMFS.
222.27 Procedures for suspension, revocation, or modification of certificates of exemption.
222.28 Possession of permits.

Subpart D—Special Prohibitions

222.31 Approaching humpback whales in Hawaii.

Subpart E—Incidental Capture of Endangered Sea Turtles

222.41 Policy regarding incidental capture of sea turtles.

AUTHORITY: 16 U.S.C. 1531-1543.

Subpart A—Introduction

§ 222.1 Purpose of regulations.

The regulations contained in this part identify the species or subspecies of fish or wildlife determined to be endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973, and presently deemed endangered species under the Endangered Species Act of 1973, which are under the jurisdiction of the Secretary of Commerce, and establish procedures and criteria for issuance of permits for the taking, importation, exportation, or otherwise prohibited acts, involving endangered fish or wildlife. The regulations of this part implement, in part, the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205, as amended.

[45 FR 57133, Aug. 27, 1980]

§ 222.2 Scope of regulations.

(a) The regulations of this part apply only to endangered fish or wildlife.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of Parts 217 through 222 of this chapter which may require a permit or prescribe additional restrictions or conditions for the taking, importation, exportation, and interstate transportation of fish or wildlife. (See also Parts 220 and 221 of this chapter.)

[45 FR 57133, Aug. 27, 1980]

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

SOURCE: 45 FR 57134, Aug. 27, 1980, unless otherwise noted.

§ 222.11-1 General certificate of exemption requirements.

(a) The Assistant Administrator, pursuant to the provisions of the Endangered Species Act, and pursuant to the provisions of this paragraph, may exempt any pre-Act endangered species part from one or more of the following:

(1) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(2) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(3) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

(b) No person shall engage in any of the above activities involving any pre-Act endangered species part without a valid certificate of exemption, or evidence of a right thereunder, issued pursuant to this Subpart B.

(c) After January 31, 1984, no person may export; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid certificate of exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

§ 222.11-2 Application renewal procedure.

(a) Any person to whom a certificate of exemption has been issued by the National Marine Fisheries Service and who desires to obtain a renewal of such certificate of exemption may make application therefor to the Assistant Administrator. The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration for further information deemed necessary.

(b) One copy of a completed application for renewal shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(c) The outside of the envelope should be marked, ATTENTION: Enforcement Division, "Certificate of Exemption Request." Assistance may be obtained by writing or calling the Enforcement Division, NMFS, in Washington, DC (AC 202, 634-7265). At least 15 days should be allowed for processing. An application for a certificate of exemption shall provide the information contained in § 222.11-3 (when the information requested is not applicable, put "N.A.") and such other information that the Assistant Administrator may require.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 48 FR 57302, Dec. 29, 1983]

§ 222.11-3 Application renewal requirements.

(a) The following information will be used as the basis for determining whether an application for renewal of a certificate of exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption Under Pub. L. 97-304.

(2) The date of application.

(3) The identity of the applicant including complete name, original certificate of exemption number, current address, and telephone number, including zip and area codes. If the applicant is a corporation, partnership, or association set forth the details.

(4) The period of time for which a renewal of the certificate of exemption is requested; however, no renewal of certificate of exemption, or right claimed thereunder, shall be effective after the close of the three-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: a unique serial number; the weight of the item in grams, to the nearest whole gram; and a description in detail sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. Provided that, the number must remain affixed to the item until it is sold to an ultimate user, as defined in § 222.11-8(b) of this part.

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a certificate of exemption.

(6) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my certificate of exemption under the Endangered Species Act of 1973, as amended by Pub. L. 94-359, 90 Stat. 911, Pub. L. 96-159, 93 Stat. 1225, Pub. L. 97-304, 95 Stat. 715, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Endangered Species Act of 1973.

(7) Signature of the applicant.

(b) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified by Certified Mail of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered as having been abandoned.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

§ 222.11-4 Procedures for issuance of renewals of certificates of exemption.

Whenever application for a renewal of a certificate of exemption is received by the Assistant Administrator which the Assistant Administrator deems sufficient, he shall, as soon as practicable, issue a certificate of renewal to the applicant.

§ 222.11-5 Application for modification of certificate of exemption by holder.

Where circumstances have changed so that an applicant or certificate of exemption holder desires to have any material term or condition of his application or certificate modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part.

§ 222.11-6 Amendment of certificates of exemption.

All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a certificate of exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.11-7 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217 through 222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

[49 FR 1042, Jan. 6, 1984]

§ 222.11-8 Purchaser provisions.

(a) Any person granted a certificate of exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold, and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(b) Any purchaser of pre-Act endangered species parts included in a valid certificate of exemption, unless an ultimate user, must within 30 days after the receipt of such parts submit a written report to the address given in the certificate specifying the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. An ultimate user, for purposes of this paragraph, means any person who acquired such endangered species part or product for his own consumption or personal use (including as gifts), and not for resale.

(c) After January 31, 1984, no purchaser may export; deliver, receive, carry or transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered species part or product even though such part or product was acquired under a certificate of exemption either prior to or subsequent to that date.

(Approved by the Office of Management and Budget under control number 0648-0079)

[50 FR 12808, Apr. 1, 1985]

§ 222.11-9 Duration of certificate of exemption.

A certificate of exemption is valid only if renewed in accordance with the procedures set forth in § 222.11-3 of this part. All certificates so renewed will be valid for a period beginning April 1, 1985, and ending no later than March 31, 1988. A renewed certificate of exemption entitles the holder to engage in the business or activity specified in the certificate of exemption, within the limitations of the Act and the regulations contained in this subpart, for the period stated in the certificate of exemption, unless sooner terminated.

[50 FR 12808, Apr. 1, 1985, as amended at 50 FR 25713, June 21, 1985]

§ 222.12 Locations covered by certificate of exemption.

The certificate of exemption covers the business or activity specified in the certificate of exemption at the address described therein. No certificate of exemption is required to cover a separate warehouse facility used by the certificate of exemption holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the certificate of exemption which is served by the warehouse or storage facility.

[50 FR 12809, Apr. 1, 1985]

§ 222.12-1 Certificate of exemption not transferable; exception.

Certificates of exemption issued under this subpart are not transferable: *Provided*, That in the event of the lease, sale or other transfer of the operations or activity authorized by the certificate of exemption the successor is not required by this subpart to obtain a new certificate of exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.11-8.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-2 Change of address.

A certificate of exemption holder may during the term of the certificate of exemption move his business or activity to a new location at which he intends regularly to carry on such business or activity, without obtaining a new certificate of exemption. However, in every case, notification of the new location of the business or activity must be given in writing within 10 days of such move to the Assistant Administrator. In each instance, the certificate of exemption must be endorsed by the Assistant Administrator. After endorsement of the certificate of exemption the Assistant Administrator will provide an amended certificate of exemption to the person to whom issued.

§ 222.12-3 Certain continuance of business.

A certificate of exemption holder who requests that his certificate of exemption be amended by the Assistant Administrator for corrections or endorsement in compliance with the provisions contained in this subpart, may continue his operations while awaiting action by the Assistant Administrator.

§ 222.12-4 Change in trade name.

A certificate holder continuing to conduct business at the location shown on his certificate of exemption is not required to obtain a new certificate of exemption by reason of a change in trade name under which he conducts his business: *Provided*, That such certificate of exemption holder requests in writing that his certificate of exemption be endorsed to reflect such change of name to the Assistant Administrator within 30 days from the date the certificate of exemption holder begins his business under the new name.

§ 222.12-5 State or other law.

A certificate of exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under any Federal laws or regulations of any other Federal Agency.

§ 222.12-6 Right of entry and examination.

Any person authorized to enforce the Act may enter during business hours the premises, including places of storage, of any holder of a certificate of exemption or of any purchaser for the purpose of inspecting or examining any records or documents required to be kept by such certificate of exemption holder or successor under this subpart, and any endangered species parts at such premises of location.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-7 Records.

The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form, and shall be retained at the address shown on the certificate of exemption, or at the principal address of a purchaser in the manner prescribed by this subpart.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 48 FR 57302, Dec. 29, 1983; 50 FR 12809, Apr. 1, 1985]

§ 222.12-8 Record of receipt and disposition.

(a) Holders of certificates of exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, must similarly maintain records of all such parts or products they receive.

(b) Such records as referred to in paragraph (a) of this section may consist of invoices or other commercial records which must be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records must (1) show the name and address of the purchaser, seller, or other transferor; (2) show the type, quantity, and identity of the part or product; (3) show the date of such sale or transfer; and (4) be retained, in accordance with the requirements of this subpart, for a period of not less than three years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a certificate of exemption.

(c)(1) Each certificate of exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (b) on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

(2) Quarterly reports are due on January 15, April 15, July 15, and October 15. The first report is due on October 15, 1985.

(d) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (b) of this section when it is shown by the record holder that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-9 Importation.

No pre-Act endangered species part shall be imported into the United States, and a certificate of exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

§ 222.13 Exportation.

(a) Any person desiring to export from the United States any pre-Act endangered species part or scrimshaw product, must possess a valid certificate of exemption issued in accordance with the provisions of this subpart.

(b) In addition to other information which may be required by this subpart, the exporter will notify the Assistant Administrator by letter which shall show the name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. Such information should reach the Assistant Administrator not less than 10 days prior to shipment.

(c) No pre-Act endangered species part or scrimshaw product which is to be exported from the United States under a certificate of exemption issued therefor, shall be exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the exportation at non-designated ports for any reason if he deems it appropriate and consistent with the purposes of the Endangered Species Act, as amended, or it will facilitate the administration or enforcement of the Act and reducing the costs thereof. Exporters are advised to see 50 CFR Part 14 for a listing of the designated ports.

§ 222.13-1 Procedure by exporter.

Shipment may not be made until the requirements of § 222.13 are met by the exporter. A copy of the certificate of exemption, and any endorsements thereto, must be sent by the exporter to the District Director of Customs at the port of exportation, and must precede or accompany the shipment in order to permit appropriate inspection prior to lading.

§ 222.13-2 Action by Customs.

Upon receipt of a certificate of exemption authorizing the exportation of pre-Act endangered species parts or scrimshaw products, the District Director of Customs may order such inspection as deemed necessary prior to lading of the merchandise. If satisfied that the shipment is proper and agrees with the information contained in the certificate, and any endorsement thereto, the District Director of Customs will clear the merchandise for export. The certificate, and any endorsements, will be forwarded to the Chief, Enforcement Division, F/CM5 National Marine Fisheries Service, Washington, DC 20235.

§ 222.13-3 Transportation to effect exportation.

Notwithstanding any provision of this subpart, it shall not be required that authorization be obtained from the Assistant Administrator for the transportation in interstate or foreign commerce of pre-Act endangered species parts to effect an exportation of such parts authorized under the provisions of this subpart.

§ 222.13-4 Burden of proof; presumption.

Any person claiming the benefit of any exemption or certificate of exemption under the Act or regulations, shall have the burden of proving that the exemption or certificate is applicable, has been granted, and was valid and in force at the time of the alleged violation.

Subpart C—Endangered Fish or Wildlife Permits

SOURCE: 39 FR 41375, Nov. 27, 1974, unless otherwise noted.

§ 222.21 General permit requirement.

No person shall take, import, export, or engage in any other prohibited activity involving, any species or subspecies of fish or wildlife which the Secretary has determined to be endangered under the Endangered Species Act of 1973, as evidenced by its inclusion on the list of endangered fish or wildlife (see 50 CFR Chapter I, Part 17) or which the Secretary of the Interior determined to be endangered under the Endangered Species Conservation Act of 1969 and which are now under the jurisdictional responsibilities of the Secretary of Commerce, without a valid permit issued pursuant to this part.

(Pub. L. 94-359)

[41 FR 36028, Aug. 26, 1976]

§ 222.22 [Reserved]

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) The Director, National Marine Fisheries Service, may issue permits for scientific purposes or to enhance the propagation or survival of the affected endangered species which authorize, under such terms and conditions as he may prescribe, taking, importation, or certain other acts with respect to endangered species otherwise pronibited by section 9 of the Endangered Species Act of 1973. The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*) Gray whale (*Eschrichtius robustus* (*glaucus, gibbosus*)), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera novaeangliae*), Bowhead whale (*Balaena mysticetus*), Right whales (*Eubalaena* spp.), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter catodon*); Cochito (*Phocoena Sinus*); Caribean monk seal (*Monachus tropicalis*) Hawaiian monk seal (*Monachus schauinslandi*); Mediterranean monk seal (*Monachus monachus*); Leatherback sea turtle (*Dermochelys coriacea*), Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*), Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*), Atlantic ridley sea turtle (*Lepidochelys kempii*). Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico, and the olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico. Of these, the National Marine Fisheries Service has sole agency jurisdiction for sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction for sea turtles while the turtles are on land. Within the jurisdiction of a State, more restrictive State laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable State laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Director except for permits involving sea turtles in which case the applicant shall follow the procedures set out in 50 CFR Part 220 Subpart E. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species should be issued by the Director. An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, Washington, D.C. 20235. Assistance may be obtained by writing the Director or calling the Marine Mammal and Endangered Species Division in Washington, DC (202-343-9445 and effective December 2, 1974, it will become 202-634-7529). At least 45 days should be allowed for processing. An application for a permit shall provide the following information (when the information requested is not applicable put "N.A.") and such other information that the Director may require:

(1) Title: As applicable, either:

(i) Application for Permit for Scientific Purposes under the Endangered Species Act of 1973; or

(ii) Application for Permit to Enhance the Propagation or Survival of the Endangered Species Under the Endangered Species Act of 1973.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity set forth the details. If the endangered species is to be utilized by a person other than the Applicant, set forth the name of that person and such other information as would be required if such person were an Applicant.

(4) A description of the purpose of the proposed acts, including:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals (i.e., does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species, and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continued benefit to science, in a museum or other institutional collection.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name; the subspecies (if applicable); population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit, for each animal, and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals;

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise taken the animals, should a permit be granted;

(7) A description of the manner of transportation of any live animal taken, imported, exported, or shipped in interstate commerce, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable about the species (or related species) or group which is the subject of the application, or from a recognized expert on the species (or related species) or group covered in the application that he has personally reviewed the amendments for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph (b)(8)(vi) requirements of this section;

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of this application, provide a detailed description of all mortalities involving species which were under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and species related to the species which is the subject of this application; captured, transported, maintained, or utilized by the applicant for scientific purposes or to enhance the propagation or survival of the affected species, and/or for all such species caused to be captured, transported, maintained, or utilized for scientific purposes or to enhance the propagation or survival of the affected species, by the Applicant;

(ii) The numbers of mortalities among such animals by species, by date, location of capture, i.e., from which population, and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act of 1973 (87 Stat. 864, Pub. L. 93-205, 16 U.S.C. 1531 et seq.) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Endangered Species Act of 1973.

(13) The applicant and/or an officer thereof must sign the application.

(c) *Issuance criteria.* The Director shall specifically consider, among other criteria, the following in determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit if granted and exercised will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species, and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity—the applicant's qualifications for the proper care and maintenance of the species and the adequacy of his facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(12) Opinions or views of scientists or other persons or organizations knowledgeable of the species which is the subject of the application or of other matters germane to the application; and

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The number and kind of species which are covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny or the species product;

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 41375, Nov. 27, 1974, as amended at 41 FR 51612, Nov. 23, 1976; 43 FR 32809, July 28, 1978; 44 FR 21289, Apr. 10, 1979; 44 FR 29480, May 26, 1979; 48 FR 57302, Dec. 29, 1983; 50 FR 1059, Jan. 9, 1985]

§ 222.24 Procedures for issuance of permits.

(a) Whenever application for a permit is received by the Director which the Director deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Information received by the Director as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party may within 30 days after the date of publication of such notice, submit to the Director his written data, views, or arguments with respect to the taking, importation, or other action proposed in the application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) Except as provided in Subpart D of 15 CFR Part 904, as soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) If a permit is issued, the Director shall publish notice thereof in the FEDERAL REGISTER, including his finding that (1) such permit was applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species and (3) will be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973.

(e) The Director may waive the thirty-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Director in the FEDERAL REGISTER within ten days following the issuance of the certificate of exemption or permit. The requirements of this section pertain solely to the permits issued pursuant to § 222.23.

[39 FR 41375, Nov. 27, 1974, as amended at 42 FR 28139, June 2, 1977; 49 FR 1042, Jan. 6, 1984]

§ 222.25 Applications for modification of permit by permittee.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 222.23(c).

§ 222.26 Amendment of permits by NMFS.

All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.27 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217 through 222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

[49 FR 1043, Jan. 6, 1984]

§ 222.28 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking, importation, exportation, or other act;

(2) The period of any transit of such person or agent which is incident to such taking, importation, exportation, or other act; and

(3) Any other time while any animal under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

Subpart D—Special Prohibitions

§ 222.31 Approaching humpback whales in Hawaii.

(a) *General.* Except as provided in §§ 222.23 through 222.28 (Scientific permits) and paragraph (b) of this section it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet of any humpback whale; or

(2) Approach by any means, within 100 yards of any humpback whale; or

(3) Cause a vessel or other object to approach within 100 yards of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation or evasive swimming patterns; interruptions of breeding, nursing, or resting activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movements; or the abandonment of a previously frequented area.

(b) *Cow/calf waters.* Except as provided in §§ 222.23 through 222.28 (Scientific permits), it is unlawful for any person subject to the jurisdiction of the United States to commit, to solicit another to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, while in waters designated as cow/calf waters, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Approach by any means within 300 yards of any humpback whale; or

(2) Cause a vessel or other object to approach within 300 yards of a humpback whale; or

(3) Operate any aircraft within 1,000 feet of any humpback whale.

(c) The following areas are designated as cow/calf waters:

(1) Adjoining the island of Lanai—all waters within two miles of the mean high-water line along the north and east between lines extending perpendicular from the coast from Kaena Point to Kamaiki Point;

(2) Adjoining the island of Maui—all waters inshore of a straight line drawn between Hekili Point and Puu Olai.

[52 FR 44915, Nov. 23, 1987]

Subpart E—Incidental Capture of Endangered Sea Turtles

§ 222.41 Policy regarding incidental capture of sea turtles.

Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 227.72(e) of this subchapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

[52 FR 24251, June 29, 1987]

PART 225—FEDERAL/STATE COOPERATION IN THE CONSERVATION OF ENDANGERED AND THREATENED SPECIES

Sec.
225.1 Purpose of regulations.
225.2 Scope of regulations.
225.3 Definitions.
225.4 Cooperation with the States.
225.5 Cooperative agreement.
225.6 Allocation of funds.
225.7 Financial assistance.
225.8 Availability of funds.
225.9 Payments.
225.10 Assurances.
225.11 Submission of documents.
225.12 Project evaluation.
225.13 Contracts.
225.14 Inspection.

AUTHORITY: Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205.

SOURCE: 41 FR 24354, June 16, 1976, unless otherwise noted.

§ 225.1 Purpose of regulations.

The regulations in this part implement section 6 of the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205 which provides, under certain circumstances, for cooperative agreements with and financial assistance to the States.

§ 225.2 Scope of regulations.

This part applies to endangered and threatened species under the jurisdiction of the Department of Commerce (see 50 CFR 222.23(a)).

§ 225.3 Definitions.

In addition to the definitions contained in the Act, and unless the context otherwise requires, in this Part 225:

(a) "Act" means the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205.

(b) "Agreements" mean signed documented statements of the actions to be taken by the State(s) and the Director in furthering certain purposes of the Act. They include:

(1) A Cooperative Agreement entered into pursuant to section 6(c) of the Act and, where appropriate, containing provisions found in section 6(d)(2) of the Act.

(2) A Grant-In-Aid Award which includes a statement of the actions to be taken in connection with the conservation of endangered or threatened species receiving Federal financial assistance, objectives and costs of such actions, and costs to be borne by the Federal Government and by the State(s).

(c) "Application for Federal Assistance" means a description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(d) "Director" means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized designee.

(e) "Program" means a State-developed plan for the conservation and management of all resident species which are deemed by the Secretary to be endangered or threatened and those which are deemed by the State to be endangered or threatened, which includes goals, priorities, strategies, actions, and funding necessary to accomplish the objectives on an individual species basis.

(f) "Project" means a substantial undertaking to conserve the various endangered or threatened species.

(g) "Project segment" means an essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(h) "Resident species" means, for purposes of these regulations, with respect to a State, a species which exists in the wild in that State during any part of its life.

(i) "Secretary" means the Secretary of Commerce or his authorized designee.

§ 225.4 Cooperation with the States.

The Director shall cooperate with any State which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Director must find and reconfirm, on an annual basis, that:

(a) Authority resides in a State agency to conserve resident species determined by the State agency or the Director to be endangered or threatened;

(b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident species in the State which are deemed by the Director to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information and data requested to the Director;

(c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species;

(d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and

(e) Provisions are made for public participation in designating resident species as endangered or threatened.

§ 225.5 Cooperative agreement.

Following receipt of an application by a State for a Cooperative Agreement and a determination by the Director that the State program for endangered and threatened species is adequate and active, the Director shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Grant-In-Aid Award can be approved for endangered or threatened species projects. The Cooperative Agreement must be reconfirmed annually to insure that it reflects new laws, species lists, rules or regulations, and programs, and to demonstrate that the program is still active and adequate. In order for a State to receive financial assistance, such Cooperative Agreement must also contain:

(a) The actions that are to be taken by the Director and the State;

(b) The benefits that are expected to be derived in connection with the conservation of endangered or threatened species; and

(c) The estimated cost of these actions.

§ 225.6 Allocation of funds.

The Director shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various States using the following as the basis for his determination:

(a) The international commitments of the United States to protect endangered or threatened species;

(b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;

(c) The number of federally listed endangered and threatened species within a State;

(d) The potential for restoring endangered and threatened species within a State; and

(e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 225.7 Financial assistance.

(a) Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement. Subsequent to such agreement, the Director may further agree with a State(s) to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an Application for Federal Assistance and a Grant-In-Aid Award. The availability of Federal funds under a Grant-In-Aid Award shall be contingent upon the continued existence of the Cooperative Agreement.

(b) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other requirements of the Office of Management and Budget Circular No. A-95 (as revised and published in the FEDERAL REGISTER on January 13, 1976 (41 FR 2052)).

(c) The mutual obligations by the cooperating agencies will be set forth in a Grant-In-Aid Award executed between the State and the Director. The Grant-In-Aid Award shall cover the proposed financing and the work items described in the documents supporting it. The form and content for both the Application for Federal Assistance and the Grant-In-Aid Award are provided in the Federal Aid Handbook No. 22.

§ 225.8 Availability of funds.

Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a Grant-In-Aid Award is signed by the Director.

§ 225.9 Payments.

The payment of the Federal share of costs incurred in the conduct of activities included under a Grant-In-Aid Award shall be in accordance with the Treasury Circular 1075.

(a) Federal payments under the Act shall not exceed 75 percent of the program costs as stated in the agreement; except, the Federal share may be increased to 90 percent when two or more States having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such States, jointly enter into an agreement with the Director.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Director as provided in Federal Management Circular 74-7.

(c) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of the Act shall have first been submitted to and approved by the Director. Payments shall be made for expenditures reported and certified by the State agency. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds for the State.

(d) Vouchers and forms provided by the Director and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Director by the State agency.

[41 FR 24354, June 16, 1976, as amended at 49 FR 30074, July 26, 1984]

§ 225.10 Assurances.

A State shall certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

§ 225.11 Submission of documents.

Documents required by section 6 of the Act or by these regulations shall be addressed to the Director, National Marine Fisheries Service, Washington, DC 20235.

§ 225.12 Project evaluation.

Any difference of opinion about a proposed project or appraised value of land to be acquired or any other related matter will be considered by qualified representatives of the Director and the State. Final determination in the event of continued disagreement rests with the Director.

§ 225.13 Contracts.

The State may use its own regulations in obtaining services provided they adhere to Federal laws and the requirements set forth in Federal Management Circular 74-7. The State is the responsible authority without recourse to the Director regarding settlement of contractual issues.

§ 225.14 Inspection.

Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.

PART 226—DESIGNATED CRITICAL HABITAT

Subpart A—Introduction

Sec.
226.1 Purpose of regulations.
226.2 Scope of regulations.

Subpart B—Critical Habitat for Marine Mammals

226.11 Northwestern Hawaiian Islands.

Subpart C—Critical Habitat for Marine Fish—[Reserved]

Subpart D—Critical Habitat for Marine Reptiles

226.71 Sandy Point, St. Croix, U.S. Virgin Islands.

AUTHORITY: 16 U.S.C. 1533.

SOURCE: 44 FR 17711, Mar. 23, 1979, unless otherwise noted.

Subpart A—Introduction

§ 226.1 Purpose of regulations.

The regulations contained in this part identify those habitats designated as critical under section 7 of the Endangered Species Act, as amended, by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, for those endangered and threatened species under the jurisdiction of the Secretary of Commerce. The list of these species is found in 50 CFR 222.23(a) for endangered species and 50 CFR 227.4 for threatened species.

§ 226.2 Scope of regulations.

(a) The critical habitat designations contained in this part apply only to the endangered and threatened species listed in this part.

(b) Regulations implementing section 7 of the Endangered Species Act, as amended, are found in 50 CFR Part 402.

(c) The provisions in this part are in addition to, and not in lieu of other regulations of Parts 217 through 227 and 402 of this chapter.

Subpart B—Critical Habitat for Marine Mammals

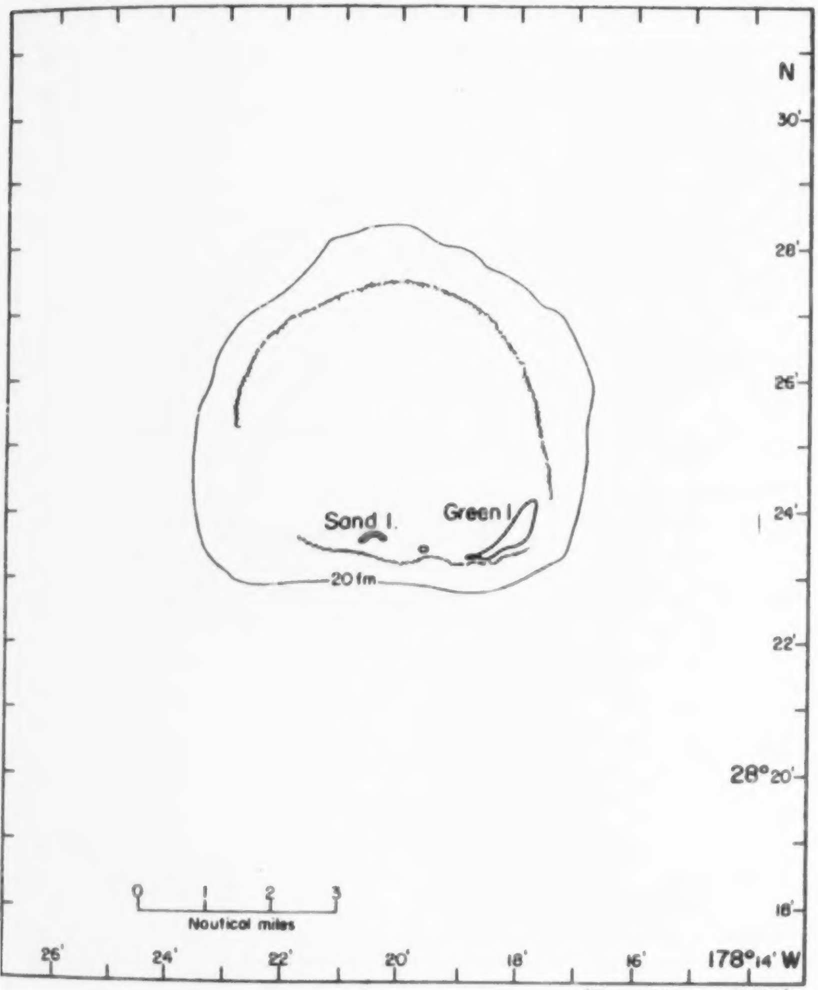
§ 226.11 Northwestern Hawaiian Islands.

HAWAIIAN MONK SEAL

(*Monachus schauinslandi*)

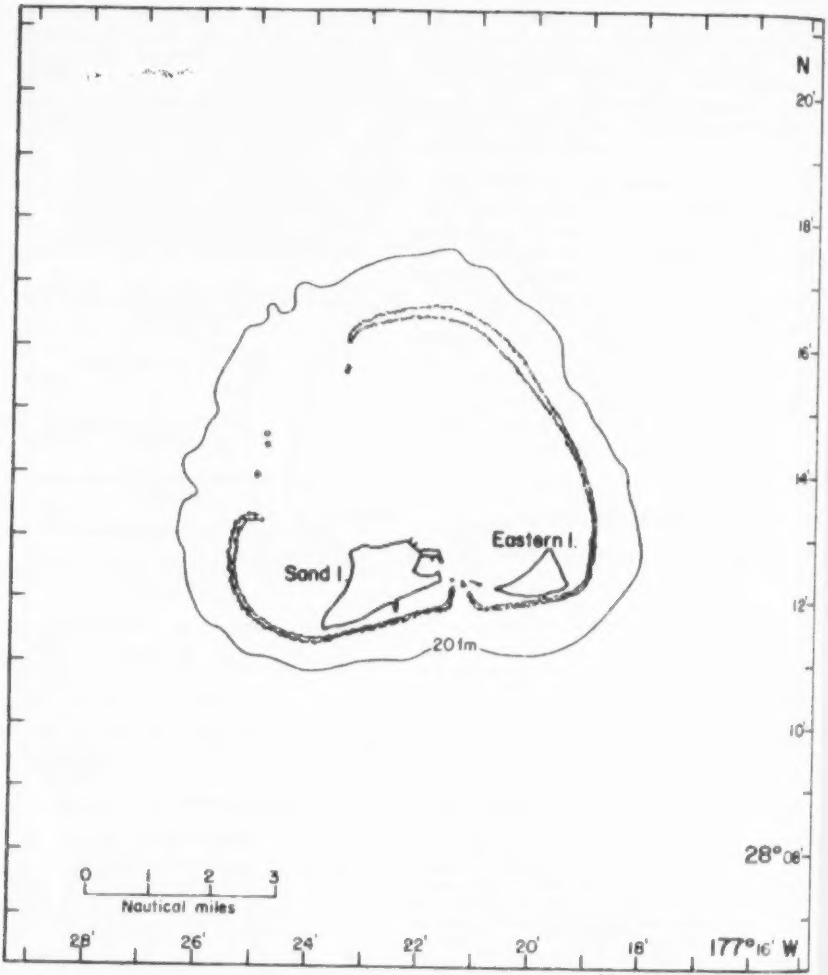
All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

Kure Atoll (28°24'N, 178°20'W)
Midway Islands, except Sand Island and its harbor (28°14' N, 177°22' W)
Pearl and Hermes Reef (27°55' N, 175° W)
Lisianski Island (26°46' N, 173°58' W)
Laysan Island (25°46' N, 171°44' W)
Maro Reef (25°25' N, 170°35' W)
Gardner Pinnacles (25°00' N, 168°00' W)
French Frigate Shoals (23°45' N, 166°00' W)
Necker Island (23°34' N, 164°42' W)
Nihoa Island (23°03.5' N, 161°55.5' W).


N
30'
28'
26'
24'
22'
28°20'
18'
Sand I.
Green I.
20 fm
0
1
2
3
Nautical miles
26'
24'
22'
20'
18'
16'
178°14' W

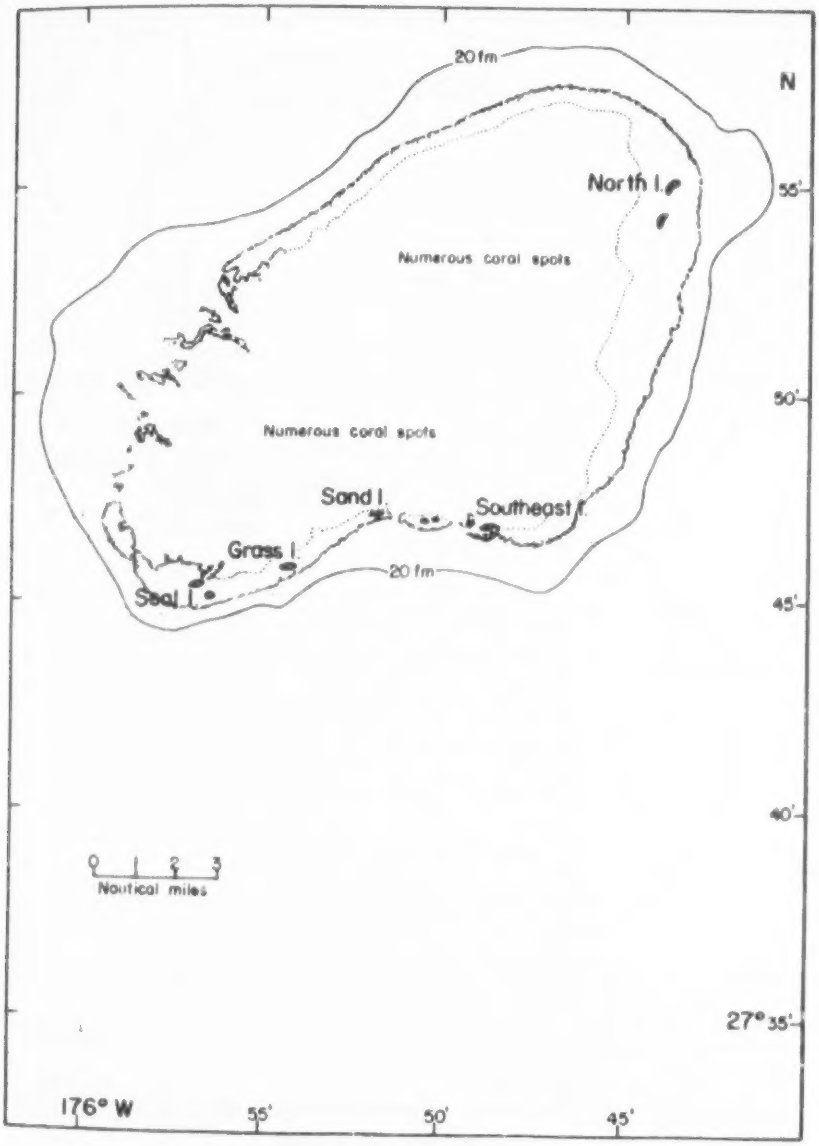
(from NOS chart 19480)

KURE ATOLL

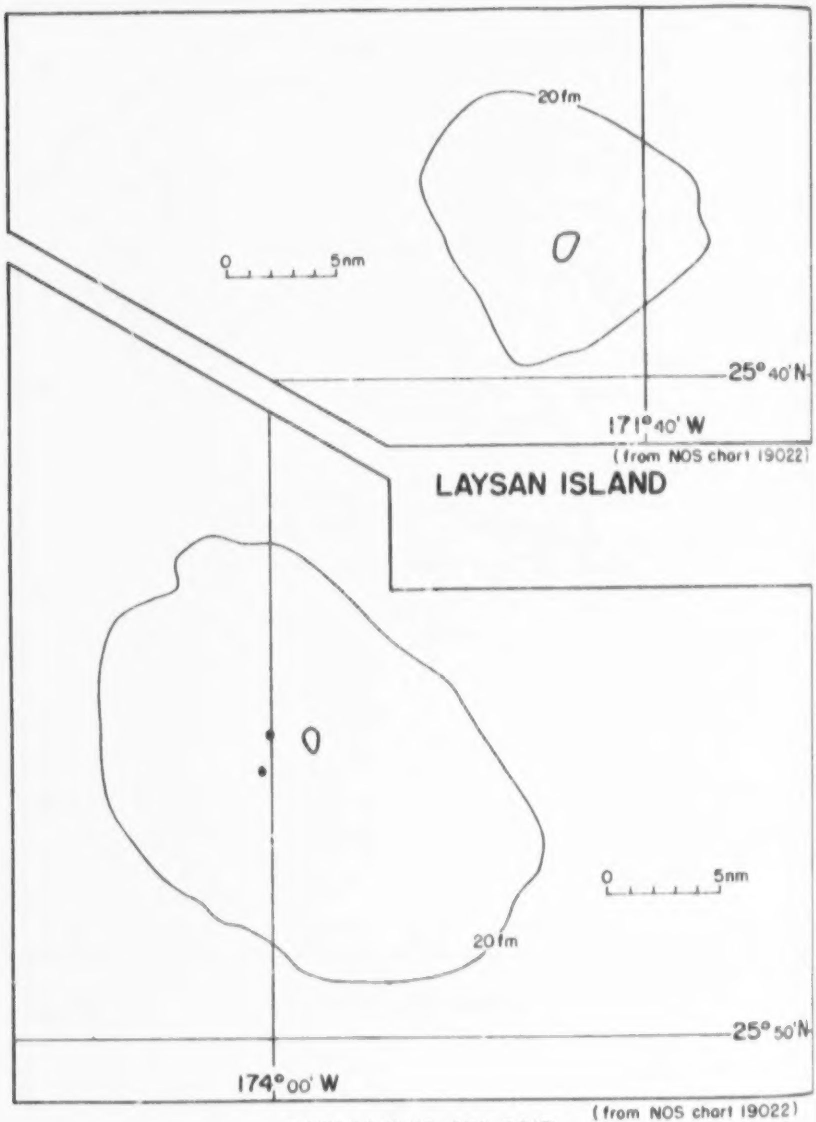

N
20'
18'
16'
14'
12'
10'
28°08'
Sand I.
Eastern I.
20 fm
0 1 2 3
Nautical miles
28'
26'
24'
22'
20'
18'
177°16' W

(from NOS chart 19480)

MIDWAY ISLANDS


20 fm
N
North I.
Numerous coral spots
Numerous coral spots
Sand I.
Southeast I.
Grass I.
20 fm
Seal I.
55'
50'
45'
40'
27° 35'
0 1 2 3
Nautical miles
176° W
55'
50'
45'

PEARL and HERMES REEF

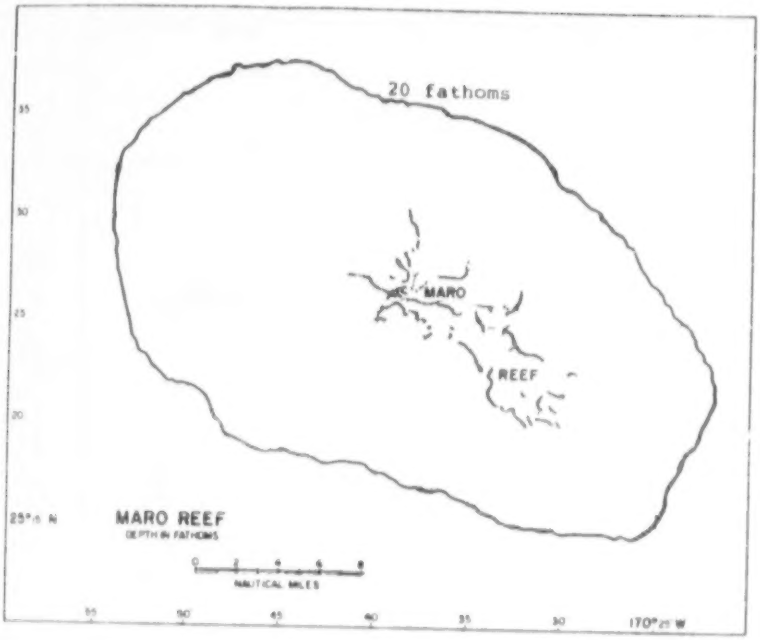

20 fm
0
5nm
25° 40' N
171° 40' W
0
5nm
20 fm
25° 50' N
174° 00' W

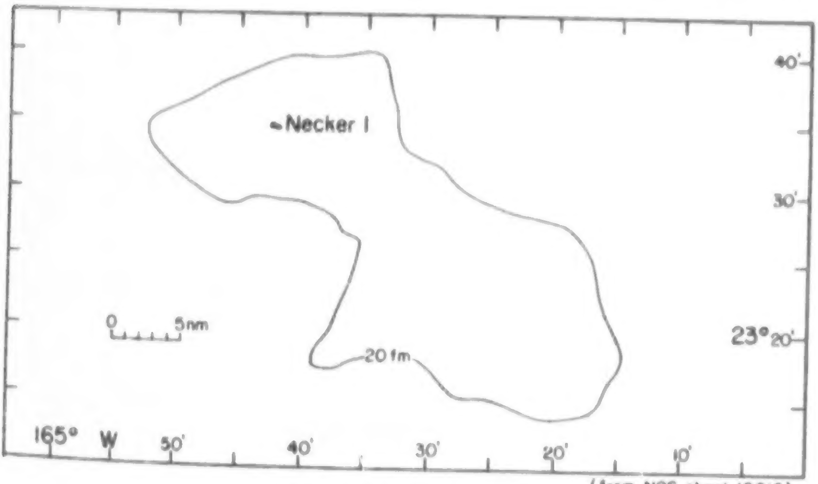
(from NOS chart 19022)

LAYSAN ISLAND

(from NOS chart 19022)

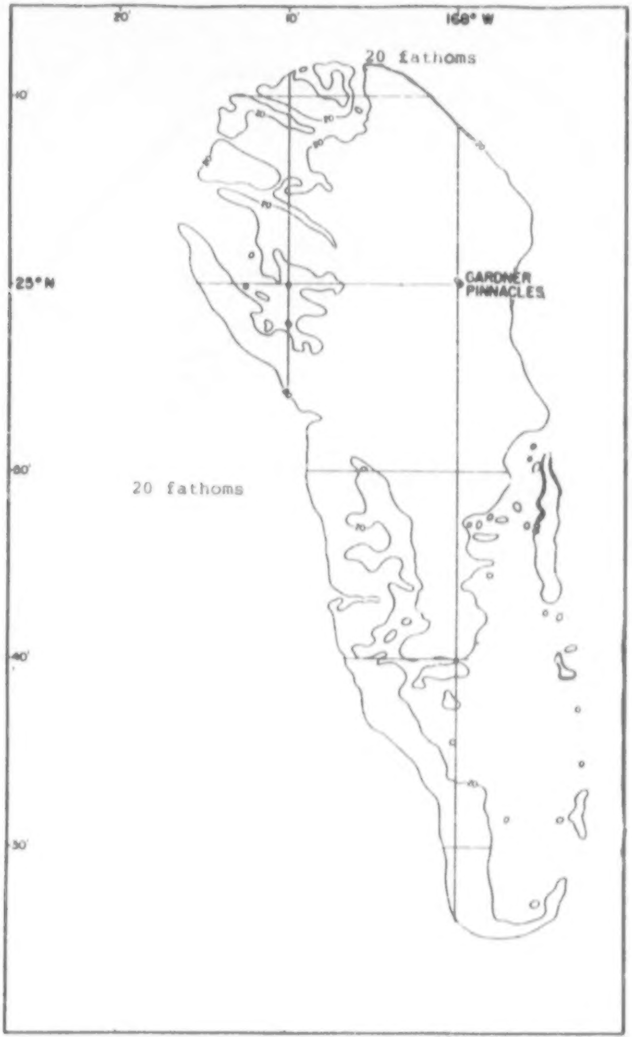
LISIANSKI ISLAND


20 fathoms
35
30
25
20
25°15 N
MARO
REEF
MARO REEF
DEPTH IN FATHOMS
0 2 4 6 8
NAUTICAL MILES
55
50
45
40
35
30
170°25 W


Necker I
40'
30'
23°20'
0 5nm
20 fm
165° W
50'
40'
30'
20'
10'

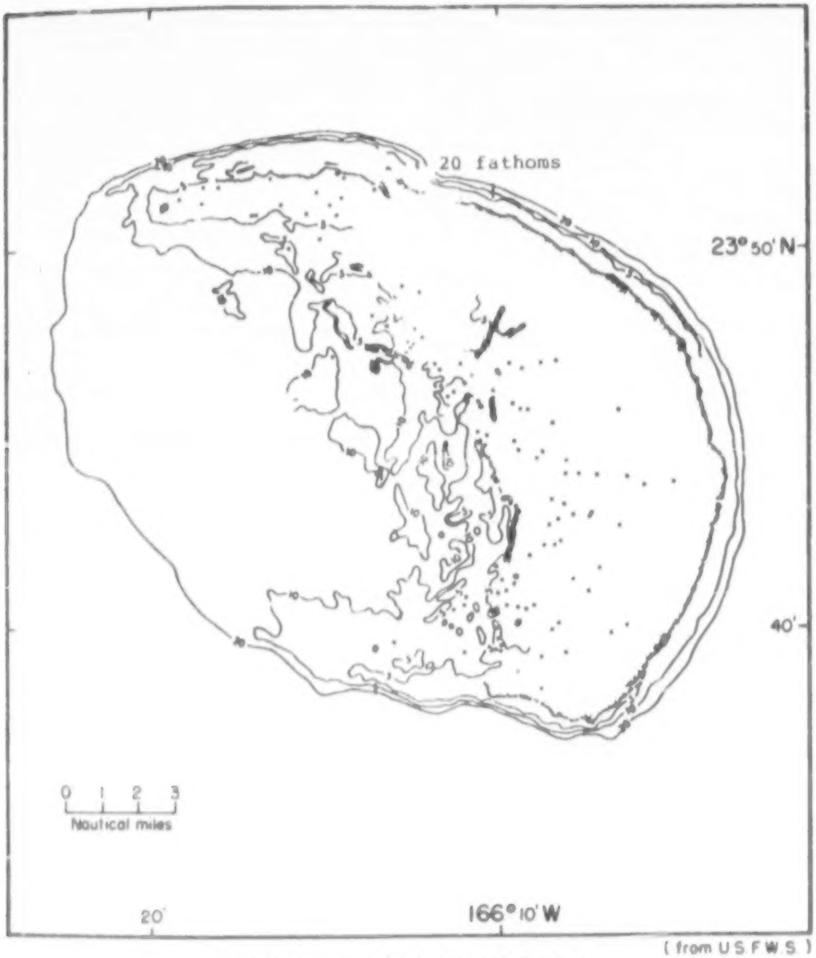
(from NOS chart 19016)

NECKER ISLAND


20'
10'
168° W
20 fathoms
10'
25° N
GARDNER PINNACLES
50'
20 fathoms
40'
30'

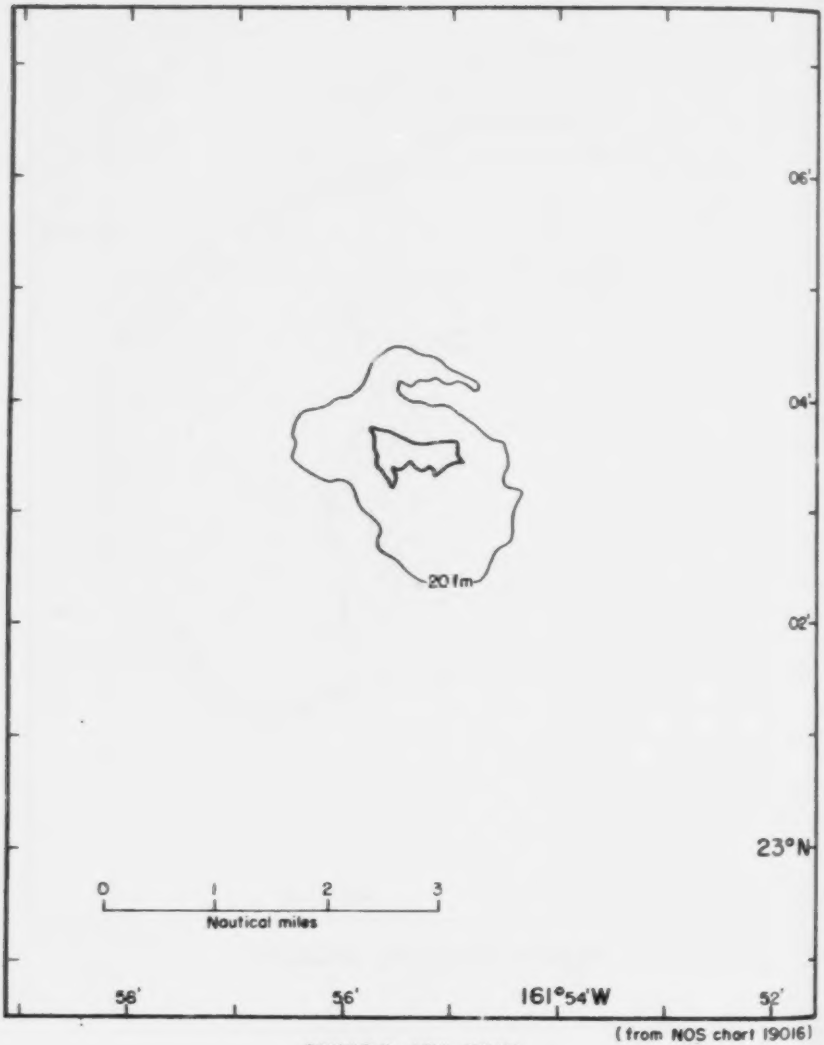
(from NOS chart 19421)

GARDNER PINNACLES


20 fathoms
23° 50′ N
40′
0 1 2 3
Nautical miles
20′
166° 10′ W

(from U.S.F.W.S.)

FRENCH FRIGATE SHOALS


06'
04'
02'
23°N
20 fm
0
1
2
3
Nautical miles
58'
56'
161°54'W
52'

(from NOS chart 19016)

NIHOA ISLAND

[53 FR 18990, May 26, 1988]

Subpart C—Critical Habitat for Marine Fish—[Reserved]

Subpart D—Critical Habitat for Marine Reptiles

§ 226.71 Sandy Point, St. Croix, U.S. Virgin Islands.

LEATHERBACK SEA TURTLE
(DERMOCHELYS CORIACEA)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42′12″ North and 64°50′00″ West.

PART 227—THREATENED FISH AND WILDLIFE

Subpart A—General Provisions

Sec.
227.1 Purpose.
227.2 Scope.
227.3 Definitions.
227.4 Enumeration of threatened species.

Subpart B—Threatened Marine Mammals

227.11 Guadalupe fur seal.

Subpart C—Threatened Marine Fish [Reserved]

Subpart D—Threatened Marine Reptiles

227.71 Prohibitions.
227.72 Exceptions to prohibitions.

AUTHORITY: 16 U.S.C. 1531 *et seq.*

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 227.1 Purpose.

The regulations contained in this part identify the species, subspecies, or any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature, under the jurisdiction of the Secretary of Commerce which have been determined to be threatened species under the Endangered Species Act of 1973 and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

§ 227.2 Scope.

(a) The regulations contained in this part apply only to the threatened species enumerated in § 227.4.

(b) The provision of this part are in addition to, and not in lieu of other regulations of Parts 217 through 222 and Part 225 of this Chapter II which prescribe additional restrictions or conditions governing threatened species.

(c) Certain of the threatened fish or wildlife listed in 50 CFR 17.11 and enumerated in 50 CFR 227.4 are included in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation, and reexportation of such species are subject to additional regulations provided in Part 23, Chapter I (Title 50).

§ 227.3 Definitions.

In addition to the definitions contained in the Act, and in Parts 217 and 225 of this chapter, and unless the context otherwise requires, in this Part 227:

(a) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1547;

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized delegate. The Assistant Administrator for Fisheries is in charge of the National Marine Fisheries Service;

(c) "Ongoing project(s)" means an activity for scientific purposes or to enhance the propagation or survival of such species which are not conducted in the course of a commercial activity initiated before the listing of the effected species;

(d) "Plastron" means the ventral part of the shell of a sea turtle consisting typically of nine symmetrically placed bones overlaid by horny plates; and

(e) "Sea turtle(s)" means those sea turtle species enumerated in § 227.4 and any part(s), product(s), egg(s) or

best copy available

offspring thereof, or the dead body or part(s) thereof.

§ 227.4 Enumeration of threatened species.

The species listed as threatened under the Act which are under the jurisdiction of the Secretary of Commerce are:

(a) Green sea turtle (*Chelonia mydas*) except for those populations listed under 50 CFR 222.23(a).[1]

(b) Loggerhead sea turtle (*Caretta caretta*).[1]

(c) Pacific ridley sea turtle (*Lepidochelys olivacea*) except for those populations listed under 50 CFR 222.23(a).[1]

The effective date of the listing of the species in paragraphs (a), (b), and (c) of this section is September 6, 1978.

(d) Guadalupe fur seal (*Arctocephalus townsendi*).

[43 FR 32809, July 18, 1978, as amended at 45 FR 29055, May 1, 1980; 50 FR 51258, Dec. 16, 1985]

Subpart B—Threatened Marine Mammals

§ 227.11 Guadalupe fur seal.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of Part 222 Subpart C—Endangered Fish or Wildlife Permits.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:

(i) Is accomplished in a humane manner;

(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Director, Southwest Region.

[50 FR 51258, Dec. 16, 1985]

Subpart C—Threatened Marine Fish [Reserved]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed in any of the following acts with respect to any species of threatened marine reptile enumerated in § 227.4 (a), (b) and (c):

(a) Import any such species into, or export any such species from, the United States;

(b) Take any such species within the United States or the territorial sea of the United States;

(c) Take any such species upon the high seas;

(d) Possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of the prohibitions in paragraphs (b) and (c) of this section;

(e) Deliver, receive, carry, transport, or ship in foreign commerce by any means whatsoever, and in the course of a commercial activity, any such species;

(f) Sell, or offer for sale, in foreign commerce any such species;

(g) Deliver, receive, carry, transport, or ship in interstate commerce, by any means whatsoever, and in the course of commercial activity; provided that this paragraph (g) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing; or

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[1] Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, jurisdiction for sea turtles is limited to turtles while in the water.

(h) Sell, or offer for sale, in interstate commerce any such species; provided that this paragraph (h) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing.

[43 FR 32809, July 28, 1978, as amended at 50 FR 51258, Dec. 16, 1985]

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that the application is complete and sufficient for processing within the 90-day period. Projects not receiving a permit or letter indicating sufficiency by the 90th day must cease. Within 30 days of receipt of an application, the Assistant Administrator will determine the completeness and sufficiency of the application for processing. If an application is deemed complete and sufficient for processing, a permit will be issued or denied within the next 90 days beginning with the date of the letter informing the applicant that the application is sufficient. Approved projects shall continue in accordance with the conditions of the permit.

(b) *Permits for zoological exhibition or educational purposes.* The Assistant Administrator may issue permits authorizing activities which would be otherwise prohibited under § 227.71 for zoological exhibition or educational purposes. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(c) *Exceptions for injured, dead, or stranded specimens.* If any member of any threatened species listed in § 227.4 is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a State agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Wherever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235, and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(d) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a State fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at his discretion.

(e) *Exception for incidental taking*—(1) *General.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, the incidental taking of any member of any species listed in § 227.4 during fishing or scientific research activities not directed toward such members of such species is allowed under the following conditions:

(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(*1*) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot, or

(*2*) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of one up to twenty-four hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to twenty-four if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Flordia Area, offshore—all year, commencing January 1, 1989.

(*4*) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(ii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iii) In the Canaveral and Atlantic Areas, a shrimp trawler fishing for or possessing rock shrimp or royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are rock shrimp or royal red shrimp.

(iv) A single test net having a headrope length of 20 feet or less is exempt from the TED requirement provided that the test net is pulled immediately in front of any other net or is not connected to another net in any way.

(3) *Tow time restrictions.* (i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 3 and 4 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year, commencing October 1, 1988.

(*2*) Atlantic Area, inshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year, commencing January 1, 1988.

(*2*) Gulf Area, inshore—March 1 through November 30, each year, commencing March 1, 1988.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Florida Area, offshore—all year, commencing January 1, 1988.

(*4*) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(iii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the tow time restrictions provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iv) In the Atlantic and Canaveral Areas, a shrimp trawler fishing for or possessing royal red or rock shrimp is exempt from the tow time restriction provided that 90 percent of all shrimp offloaded from, the trawler are royal red or rock shrimp.

TABLE 1—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET OR LONGER IN LENGTH

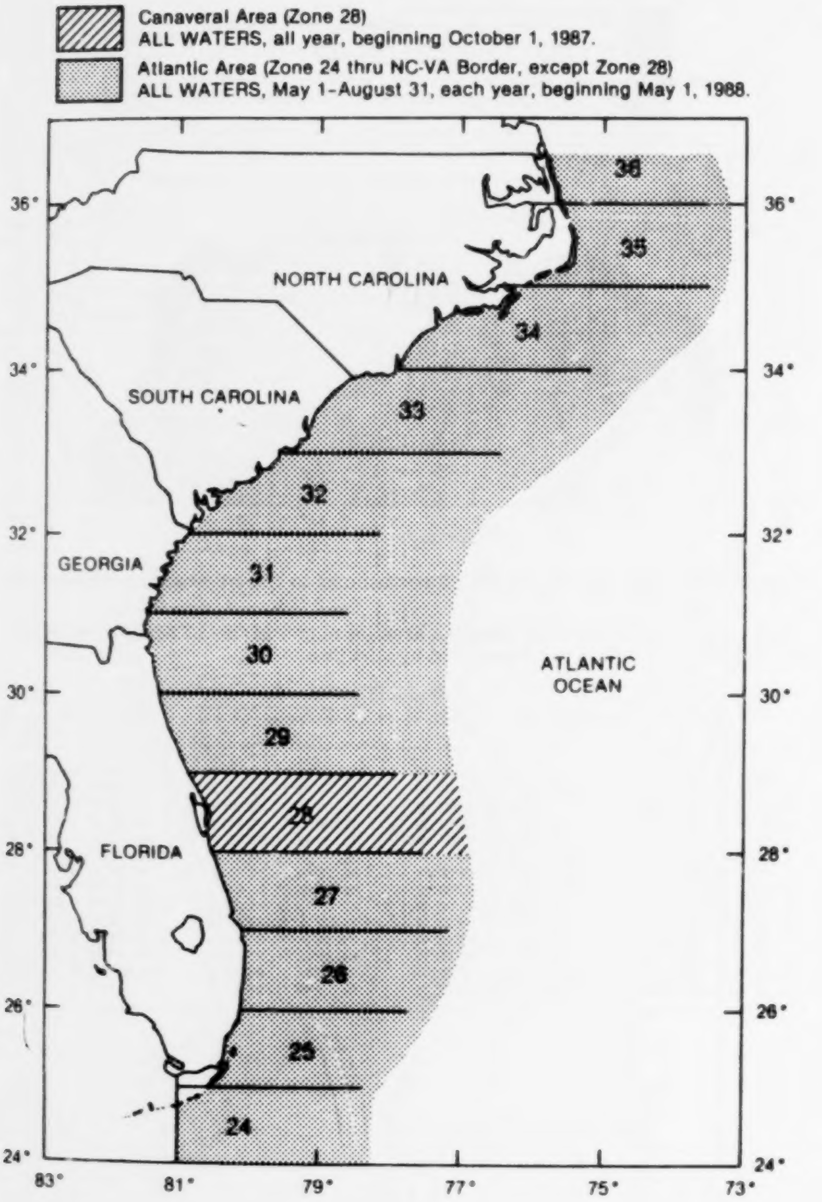
Area	Start date	Season
Atlantic Ocean:		
Canaveral Area—offshore	October 1, 1987	All year
Atlantic Area—offshore	May 1, 1988	May 1 through August 31, each year
Gulf of Mexico:		
Southwest Florida Area—offshore to 15 nautical miles	Jan 1, 1988	All year
Gulf Area—offshore to 15 nautical miles	March 1, 1988	March 1 through November 30, each year
Southwest Florida Area—offshore	Jan 1, 1989	All year
Gulf Area—offshore	March 1, 1989	March 1 through November 30, each year

TABLE 2—90 MINUTE TOW TIMES [1]

Area	Start date	Season
Atlantic Ocean:		
Canaveral Area—inshore	October 1, 1988.	All year
Atlantic Area—inshore	May 1, 1988	May 1 through August 1, each year
Gulf of Mexico:		
Southwest Florida Area—inshore	January 1, 1988.	All year
Gulf Area—inshore	March 1, 1988.	March 1 through November 1, each year. year
Atlantic Ocean:		
Canaveral Area—Offshore	October 1, 1987.	All year
Atlantic Area —offshore	May 1, 1988	May 1 through August 31, each year
Gulf of Mexico:		
Southwest Florida Area—offshore to 15 nautical miles.	January 1, 1963.	All year
Gulf Area—offshore to 15 nautical miles	March 1, 1988.	March 1 through November 30, each year
Southwest Florida area—offshore	January 1, 1989.	All year
Gulf Area—offshore	March 1, 1989.	March 1 through November 30, each year

[1] Tow time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

MAP 1. OFFSHORE ATLANTIC WATERS WHERE TEDS ARE REQUIRED

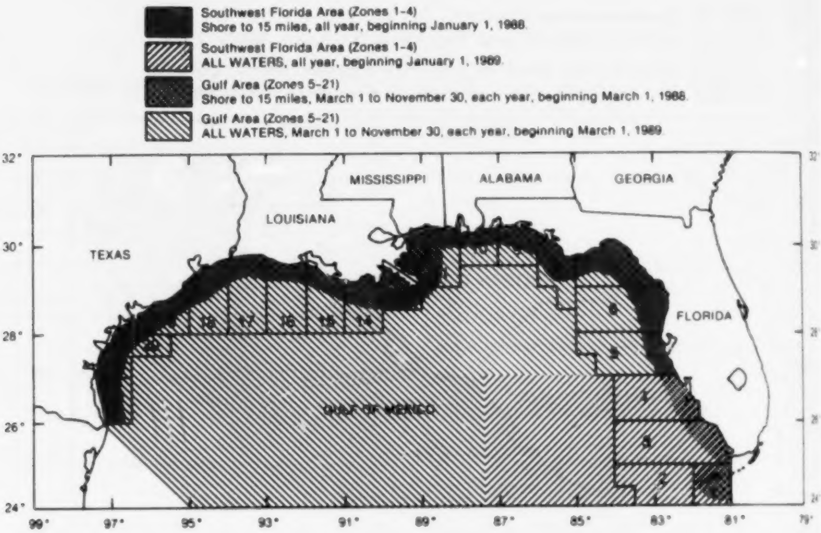


▨ Canaveral Area (Zone 28)
ALL WATERS, all year, beginning October 1, 1987.

░ Atlantic Area (Zone 24 thru NC-VA Border, except Zone 28)
ALL WATERS, May 1–August 31, each year, beginning May 1, 1988.

NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
FLORIDA
ATLANTIC OCEAN
36
35
34
33
32
31
30
29
28
27
26
25
24
36°
34°
32°
30°
28°
26°
24°
83°
81°
79°
77°
75°
73°

MAP 2. OFFSHORE GULF OF MEXICO WATERS WHERE TEDS ARE REQUIRED


Southwest Florida Area (Zones 1-4)
Shore to 15 miles, all year, beginning January 1, 1988.
Southwest Florida Area (Zones 1-4)
ALL WATERS, all year, beginning January 1, 1989.
Gulf Area (Zones 5-21)
Shore to 15 miles, March 1 to November 30, each year, beginning March 1, 1988.
Gulf Area (Zones 5-21)
ALL WATERS, March 1 to November 30, each year, beginning March 1, 1989.
TEXAS
LOUISIANA
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
GULF OF MEXICO
32°
30°
28°
26°
24°
99°
97°
95°
93°
91°
89°
87°
85°
83°
81°
79°
18
17
16
15
14
6
5
4
3
2
1

NOTE: The numbered zones on map 2 correspond to the numbered zones on ma
4.

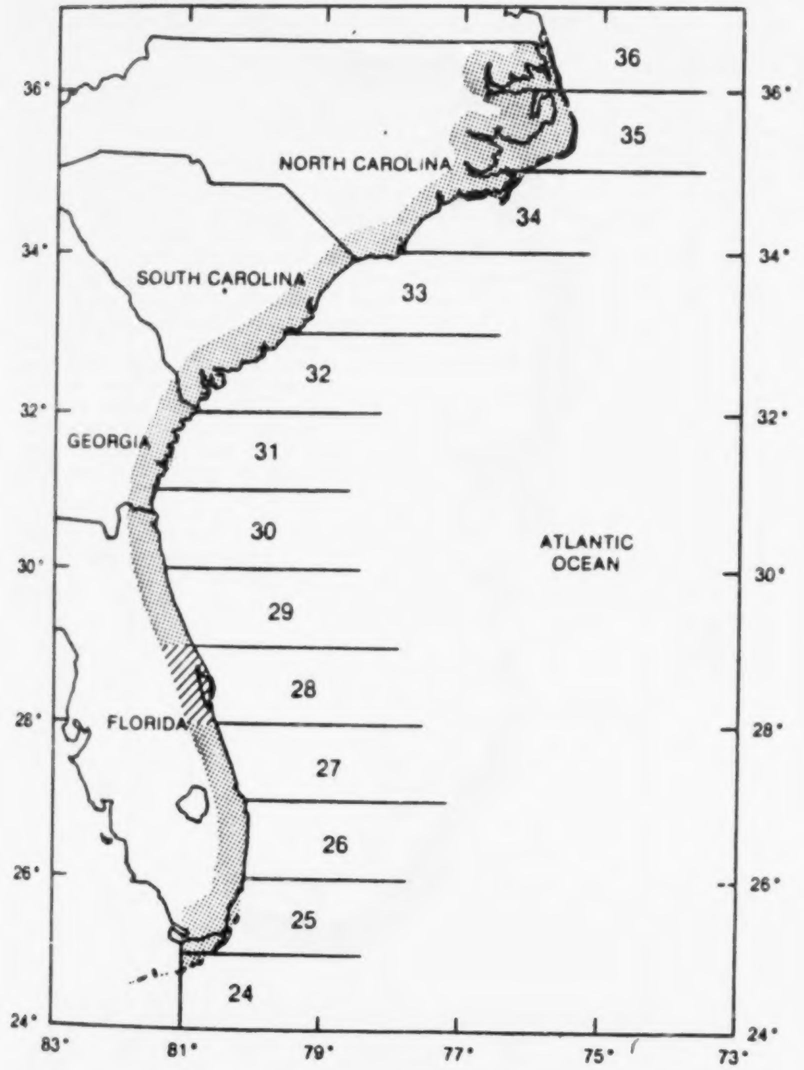
The seaward margin of the stippled area on map 2 is the 15 nautical mile line. The following 55 points are connected by this line.

1. 24°28' N., 81°00' W.	15. 27°30' N., 83°01' W.	29. 29°08' N., 88°43' W.	43. 28°44' N., 95°07' W
2. 24°18' N., 81°42' W.	16. 27°52' N., 83°06' W.	30. 28°45' N., 89°00' W.	44. 28°31' N., 95°30' W
3. 24°17' N., 82°00' W.	17. 28°32' N., 82°57' W.	31. 28°40' N., 89°30' W.	45. 28°19' N., 96°00' W
4. 24°23' N., 82°56' W.	18. 29°22' N., 83°37' W.	32. 29°03' N., 89°47' W.	46. 28°07' N., 96°16' W
5. 24°38' N., 83°12' W.	19. 29°45' N., 83°54' W.	33. 28°52' N., 90°05' W.	47. 27°59' N., 96°30' W
6. 24°53' N., 82°55' W.	20. 29°39' N., 84°12' W.	34. 28°48' N., 90°23' W.	48. 27°43' N., 96°47' W
7. 24°51' N., 82°07' W.	21. 29°21' N., 85°00' W.	35. 28°48' N., 90°55' W.	49. 27°30' N., 96°52' W
8. 24°54' N., 81°48' W.	22. 29°27' N., 85°30' W.	36. 29°01' N., 91°24' W.	50. 27°16' N., 97°03' W
9. 25°06' N., 81°25' W.	23. 29°59' N., 86°00' W.	37. 29°13' N., 91°50' W.	51. 27°00' N., 97°05' W
10. 25°32' N., 81°33' W.	24. 30°09' N., 86°43' W.	38. 29°17' N., 92°22' W.	52. 26°45' N., 97°02' W
11. 25°43' N., 81°55' W.	25. 30°04' N., 87°12' W.	39. 29°31' N., 93°19' W.	53. 26°30' N., 96°57' W
12. 26°11' N., 82°05' W.	26. 29°58' N., 88°00' W.	40. 29°26' N., 93°49' W.	54. 26°15' N., 96°54' W
13. 26°20' N., 82°25' W.	27. 29°58' N., 88°32' W.	41. 29°14' N., 94°28' W.	55. 25°59.5' N., 96°52' W
14. 27°11' N., 82°49' W.	28. 29°29' N., 88°52' W.	42. 29°05' N., 94°37' W.	

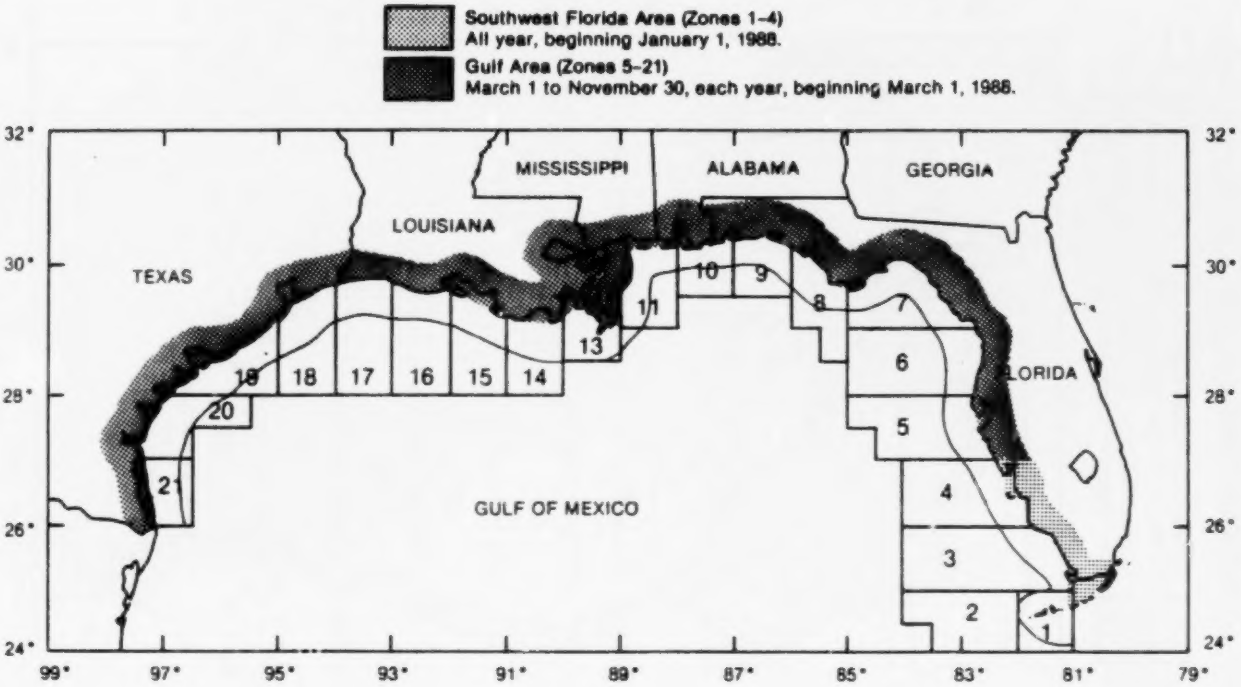
MAP 3. INSHORE ATLANTIC WATERS WHERE 90 MINUTE TOW TIMES APPLY

▨ Canaveral Area (Zone 28)
All year, beginning October 1, 1987.

░ Atlantic Area (Zone 24 thru NC-VA Border, except Zone 28)
May 1-August 31, each year, beginning May 1, 1988.


36
35
34
33
32
31
30
29
28
27
26
25
24
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
FLORIDA
ATLANTIC
OCEAN
36°
34°
32°
30°
28°
26°
24°
83°
81°
79°
77°
75°
73°

MAP 4. INSHORE GULF OF MEXICO WATERS WHERE 90 MINUTE TOW TIMES APPLY


Southwest Florida Area (Zones 1–4)
All year, beginning January 1, 1988.
Gulf Area (Zones 5–21)
March 1 to November 30, each year, beginning March 1, 1988.
32°
30°
28°
26°
24°
99°
97°
95°
93°
91°
89°
87°
85°
83°
81°
79°
TEXAS
LOUISIANA
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
GULF OF MEXICO
1
2
3
4
5
6
7
8
9
10
11
13
14
15
16
17
18
19
20
21

(4) *Qualified turtle excluder devices*—(i) *General.* In a qualified TED, the space between deflector bars cannot exceed four inches. Any other specification of dimension or strength of construction materials is a minimum requirement; i.e., a component that is larger or more durable than specified in paragraph (e)(4)(ii) of this section meets the requirement. Floats may be attached to any device.

(ii) *Approved TEDs.* The following TEDs are approved for use wherever and whenever a TED is required and for use where and when the 90 minute tow time would otherwise apply.

(A) *NMFS TED (Figure 1).* The NMFS TED consists of two oblong end hoops holding a diagonal deflector grid that are sewn into the trawl net ahead of the cod end. The device has a top-opening door. The end hoops are made from ½-inch welded steel pipe. The deflector grid and door are made from ¼-inch (inside diameter) welded galvanized pipe. The device may be rigid or collapsible and can be constructed using fiberglass rod or aluminum pipe of similar strength. The rigid version has rods welded to the front and rear hoops to align the deflector grid and to support the weight of the net and its catch. In the collapsible version, ⅛-inch steel cables perform these functions. Net webbing is sewn to the door frame and to the bottom and both sides of the end hoops. The cod end attaches to the rear hoop. A finfish deflecting apparatus may be installed in the device to eliminate unwanted bycatch. A finfish deflecting apparatus may consist of a webbing accelerator funnel placed in front of the TED diagonal bars and a rectangular grid with approximately 2½ inches between bars behind the TED diagonal bars. Holes are cut in the webbing, which has been stretched around the TED frame, to allow finfish to escape. When a sea turtle enters the net, it passes through the front hoop and is deflected upwards by the grid. The turtle is then able to open the door and escape. Shrimp pass through the grid to be retained in the code end. The minimum dimensions for a NMFS TED used in the Gulf of Mexico Area and the Southwest Florida area are end hoops-20 inches high by 34 inches wide, door frame 25 inches by 25 inches, door opening 10 inches above the rear hoop. The minimum dimensions for a NMFS TED used in the Atlantic Area and the Canaveral Area are end hoops 30 inches, high by 45 inchs wide, door frame 30 inches by 30 inches, door opening 12 inches above the rear hoop. In all areas, the deflector grid angle must measure between 30° and 45° from the horizontal when the device is deployed. NMFS TEDs of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used.

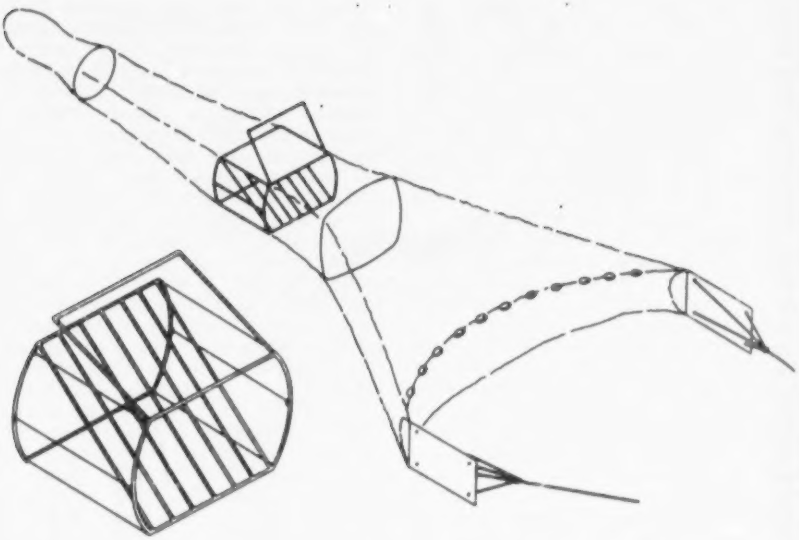


FIGURE 1 (NMFS TED)

(B) *Cameron TED (Figure 2).* The Cameron TED is a rigid device similar to the NMFS TED in both form and function. It uses round end hoops instead of oblong ones. It is made from ½-inch aluminum rod and is sewn into the trawl net ahead of the cod end. The device may be constructed of steel pipe, fiberglass rod or other materials of similar strength. This TED does not use a movable door. Instead, a turtle escape opening is cut in the top mesh of the net above the deflector grid. The minimum dimensions for a Cameron TED used in the Gulf Area and the Southwest Florida Area are 32-inch inside diameter end hoops and a 32-inch top mesh opening. The minimum dimensions for a Cameron TED used in the Atlantic Area and the Canaveral Area are 35 inch inside diameter end hoops and a 35 inch top mesh opening. For all areas, the deflector grid must be angled between 30° and 45° from horizontal. Cameron TEDS of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used. Cameron TEDs, as originally designed, used a quick release hoop fastener. This feature may not be used. A Cameron TED must be sewn into the net to be a qualified device.

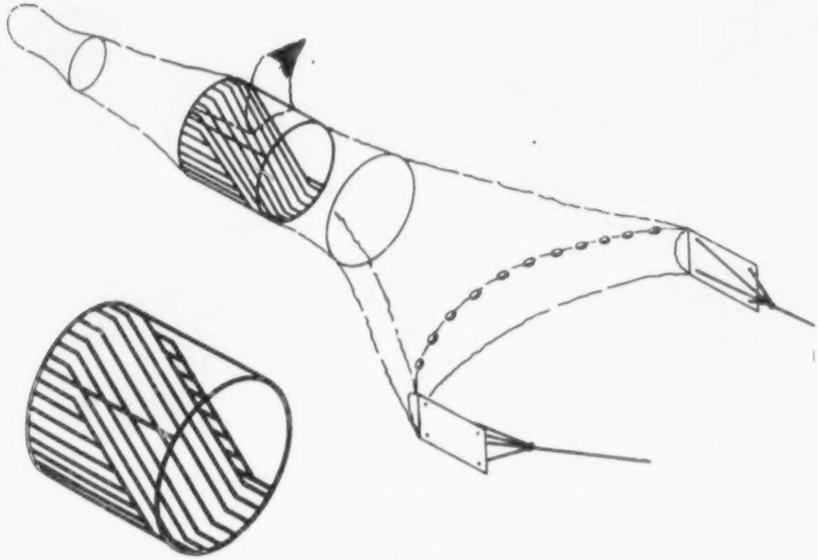


FIGURE 2 (CAMERON TED)

(C) *Matagorda TED* (*Figure 3*). The Matagorda TED is a single, rigid, rectangular deflector grid that may be made from a variety of materials including ¼-inch steel pipe, ½-inch aluminum rod, or fiberglass rod of comparable strength. Unlike the NMFS or Cameron TEDs, the Matagorda TED does not use two end hoops to position the deflector grid. The grid itself must be sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water. The angled grid deflects turtles either upward or downward to allow them to escape through an opening in the net mesh. The minimum dimensions for a Matagorda TED used in the Gulf Area and the Southwest Florida Area are a deflector grid 28 inches wide, by 36 inches long, and a minimum release opening of 32 inches. The minimum dimensions for a Matagorda TED used in the Atlantic Area and the Canaveral Area are a deflector grid 30 inches wide by 42 inches long, and a minimum release opening of 35 inches.

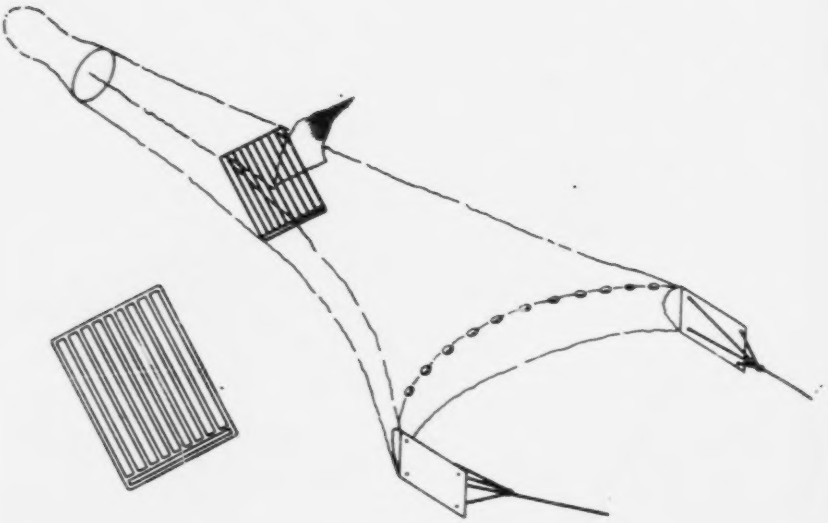


FIGURE 3 MATAGORDA TED

(D) *Georgia TED (Figure 4).* The Georgia TED is a single, rigid, oval deflector grid similar to the Matagorda TED in form and function. It may be made from ⅓-inch steel pipe, ½-inch aluminum rod, or fiberglass rod of comparable strength. Like the Matagorda TED, the grid must be sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water to allow turtles to escape either upward or downward through an opening in the net mesh. The minimum dimensions for a Georgia TED used in the Gulf Area and the Southwest Florida Area are a 28-inch smallest inside diameter and a minimum release opening of 32 inches. The minimum dimensions for a Georgia TED used in the Atlantic Area and the Canaveral Area are a 30-inch smallest inside diameter and a minimum release opening of 35 inches. A variation of the Georgia TED uses removable deflector bars (inside a hoop) or varying spacing which are bolted to a permanently affixed second hoop. This feature may be used only if the deflector bar hoop is also laced to the net and the permanently attached hoop so that it cannot be easily removed at sea. Deflector bars can be spaced no more than 4 inches apart. Georgia type TEDs that were acquired prior to July 1, 1987, may continue to be used as long as they meet minimum size standards and both hoops are permanently affixed to the trawl net.

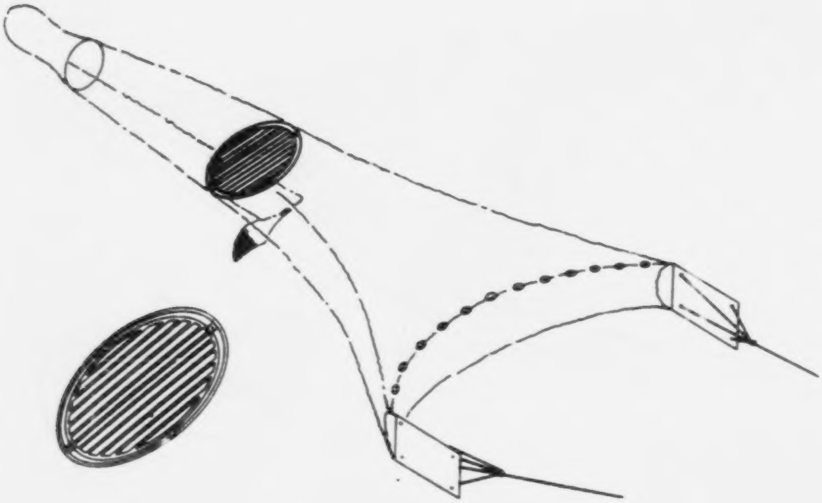


FIGURE 4 (GEORGIA TED)

(E) *Morrison TED* (*Figure 5*). In the Morrison TED, webbing is substituted for the rigid deflector grids used in the TEDs described above. The webbing consists of number 42 (3 millimeters thick) or larger polypropylene, heat-set knotted or braided. The polypropylene must be untreated and of a color easily distinguished from the trawl net. The stretched opening of the mesh may not exceed 8". Depending on the trawl net type, the webbing may be installed as one panel or as a main and two side (jib) panels (Figure 6). In either case, the webbing must form a complete barrier to large objects inside the trawl net forward of the cod end. The base of the webbing must be attached to the trawl net not less than 16′8" forward of the point at which the cod end is attached to the trawl net. The apex of the webbing must be attached to the top center of the trawl net not more than 20" forward of the point at which the cod end is attached to the trawl net. Each point on the circumference of the webbing must be attached to the trawl net. The meshes of the webbing must be under tension when the cod end is pulled aft thus forming diamond patterns pointing toward the top of the trawl net. As an escape hole, a slit at least 4′8" in length must be cut in a fore and aft direction at the top of the trawl net immediately forward of the apex of the webbing. The slit may not be covered or closed in any manner.

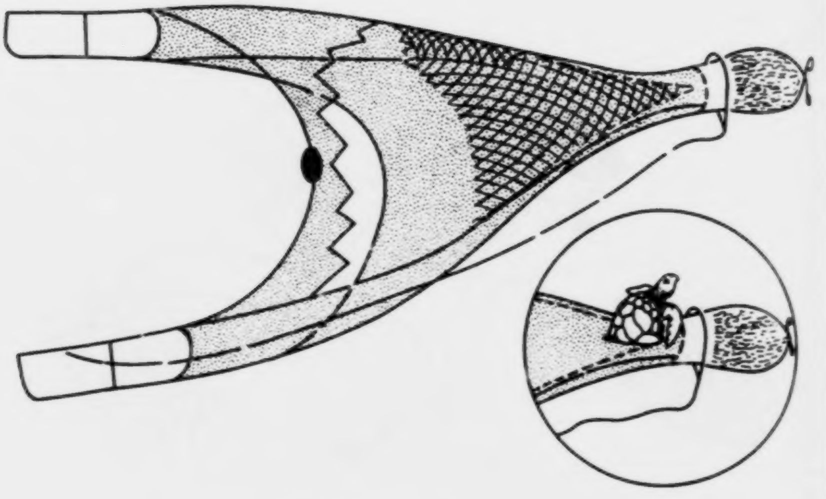


Figure 5 (MORRISON TED)

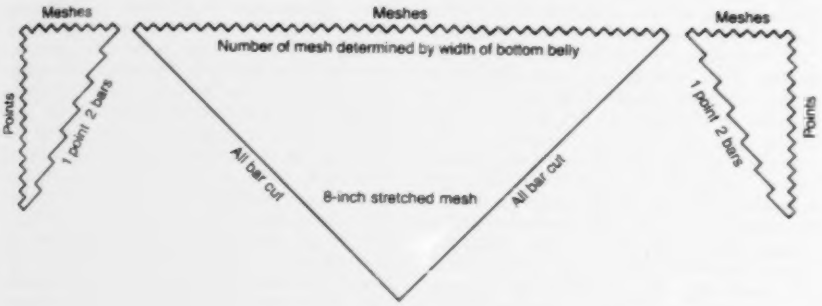

Meshes
Points
1 point 2 bars
Meshes
Number of mesh determined by width of bottom belly
All bar cut
8-inch stretched mesh
All bar cut
Meshes
1 point 2 bars
Points

Figure 6 SCHEMATIC EXAMPLE OF MORRISON TED'S MAIN PANEL & JIBS

(F) *Parrish TED* (*Figure 7*). This TED is a unit that is installed between the body of the trawl and the bag. The unit consists of three major components: the extension, the deflector panel, and the frame. The extension is a piece of netting of 1¾ inch stretch mesh, No. 15 thread, treated nylon, measuring 150 meshes by 100 meshes. When installed in the trawl, the extension is cylindrically shaped with a circumference of 150 meshes and a depth of 100 meshes. The deflector panel, which slopes down the inside of the extension, is a rectangular piece of 8 inch stretched mesh, 3 mm diameter, braided polyethylene netting. The deflector panel measures 8 meshes across the leading and trailing edges of the deflector panel and is 15½ meshes deep. The 8 meshes at the leading edge of the deflector panel are sewn into the small mesh (1¾ inch) of the extension 3 meshes down from the top edge of the extension. The 8 meshes at the trailing edge of the deflector panel are attached to the top edge of the frame. Each side edge of the panel is attached at 5⅝ inch intervals to a ⅜ inch diameter, 3 strand polydacron rope which is attached to the small mesh of the extension at 5⅝ inch intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame is a rectangular ⅜ inch diameter welded galvanized steel rod unit with a 40 x 4 inch opening and small pad eyes at the top corners. The trailing edge meshes of the deflector panel are attached to the top of the frame, and 50 lateral meshes of the extension netting (1¾ inch mesh) are centered and sewn to the bottom and sides of the frame. The escape opening consists of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A 50 inch, ¼ inch diameter, bungee cord is laced through the meshes at the cut. Opposing ends of the bungee cord are secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep is attached to the meshes at the cut.

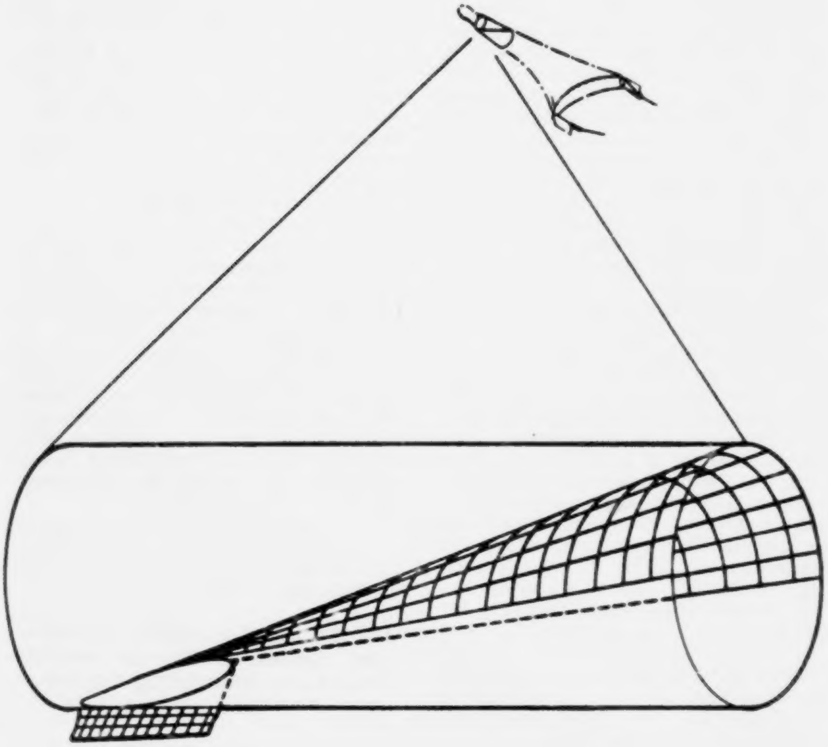


Figure 7. (PARRISH T.E.D.)

(iii) *Other TEDs.* Additional devices may be approved as qualified TEDs if they demonstrate a turtle exclusion rate of 97 percent according to a NMFS-approved scientific protocol published in the FEDERAL REGISTER. One such protocol was published on June 29, 1987. Turtle exclusion testing must be conducted under the supervision of the Assistant Administrator or a designee. A person interested in testing a TED should contact the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

(iv) *Fishing efficiency experiments.* From time to time, the Director, Southeast Region, NMFS, may authorize public or private experimentation to develop alternative turtle excluder devices or to determine effects on shrimp fishing efficiency. A research protocol is available for such purposes. Requests for approval of experimental programs should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702.

(5) [Reserved]

(6) *Prohibitions.* It is unlawful for any person to do any of the following:

(i) Fail to use a qualified TED in each net during trawling on a vessel 25 feet or longer in length in an area where and at a time when a TED is required pursuant to this part;

(ii) Fail to restrict a tow time to 90 minutes in an area and at a time such restriction applies, unless a qualified TED is being used in each net during trawling.

(iii) Land from or possess on board a vessel white, brown, pink, or seabob shrimp in quantities exceeding 10 per cent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in a TED required area without using a qualified TED in each net during trawling;

(iv) Fail to follow sea turtle handling and resuscitation procedures specified in paragraph (e)(1)(i) of this section; or

(v) Fail to comply with instructions and signals issued by an authorized officer. Enforcement procedures and signals used in the Gulf of Mexico shrimp fishery are listed at 50 CFR Part 658. These procedures will be used to enforce the rules of this section in all geographic areas.

(7) *Enforcement policy regarding incidental capture of threatened sea turtles.* Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with the rules of paragraph (e) of this section will not be subject to civil penalties under the Act for incidental capture of threatened sea turtles by shrimp trawl gear.

(f) *Subsistence.* The prohibition in § 227.71(b) shall not apply with respect to the taking of any member of the species of green sea turtle (*Chelonia mydas*) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

[43 FR 32809, July 28, 1978, as amended at 46 FR 43977, Sept. 2, 1981; 52 FR 24251, June 29, 1987; 52 FR 37154, Oct. 5, 1987; 53 FR 33821, Sept. 1, 1988]

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

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228.26 Modifications of Letters of Authorization.

AUTHORITY: 16 U.S.C. 1371(a)(5).

SOURCE: 47 FR 21254, May 18, 1982, unless otherwise noted.

Subpart A—General

§ 228.1 Purpose

The regulations in this part implement section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), Pub. L. 97-58, which provides a mechanism for allowing, upon request, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region.

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the species involved are not depleted and if the National Marine Fisheries Service (a) finds that the total taking during the specified time period will have a negligible impact on the species and their habitat, and on the availability of the species for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activities are contained in subsequent subparts to this Part 228.

§ 228.3 Definitions.

In addition to definitions contained in the Act and in 50 CFR 216.3 and unless the context otherwise requires, in this Part 228:

"Citizens of the United States" and *"U.S. citizens"* mean individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, State and local government agencies shall also constitute citizens of the United States for purposes of this part.

"Incidental, but not intentional, taking" means accidental taking. It does not mean that the taking is unexpected, but rather it includes those takings which are infrequent, unavoidable or accidental. (Complete definition of take is contained in 50 CFR 216.3).

"Negligible impact" means an impact which can be disregarded or which is so small, unimportant, or of so little consequence as to warrant little or no attention. A finding of negligible impact cannot be made if a species or stock is depleted under 16 U.S.C. 1362(1).

"Small numbers" means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

"Specified activity" means any activity, other than commercial fishing, which takes place in a specified geographical region and potentially involves the taking of small numbers of non-depleted marine mammals. The specified activity and specified geographical region should be identified so that the anticipated effects on non-depleted marine mammals will be substantially similar.

"Specified geographical region" means an area within which a specified activity is conducted and which has certain biogeographic characteristics.

§ 228.4 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider allowing the taking by U.S. citizens of small numbers of non-depleted marine mammals incidental to a specified activity, a written request must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235. Requests shall include the following information on the activity in general and cumulative impacts of the total potential taking (by all persons conducting the activity):

(1) A description of the specific activity or class of activities that can be expected to result in incidental taking of non-depleted marine mammals;

(2) The dates and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be taken by age, sex and reproductive condition, and the type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

(5) The anticipated impact of the activity upon the species or stocks;

(6) The anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

(7) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(8) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(9) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(10) Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species, level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

(11) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b) The Assistant Administrator shall determine the adequacy and completeness of a request, and if found to be adequate, will invite information, suggestions, and comments through notice in the FEDERAL REGISTER, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations.

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking constitutes a negligible impact on the species or stocks of marine mammals, their habitat, and on the availability of the species for subsistence uses. Any preliminary finding of negligible impact shall be proposed for public comment before specific regulations are promulgated.

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth permissible methods of taking and requirements for monitoring and reporting.

(b) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting or research, the regulations may be modified, in whole or part, after notice and opportunity for public review.

§ 228.6 Letters of authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established. Requests for Letters of Authorization shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235. The information to be submitted in a request may be obtained by writing the Assistant Administrator.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the finding that the total of such taking will have a negligible impact on the marine mammal species or stocks and their habitat, and on the availability of the species for subsistence uses.

(c) Notice of issuance of all Letters of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(d) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the National Marine Fisheries Service determines that (1) the regulations prescribed are not being substantially complied with, or (2) the taking allowed is having, or may have, more than a negligible impact on the species or stocks concerned, their habitat, or on their availability for subsistence uses.

(f) The requirement for notice and opportunity for public review in § 228.6(e) shall not apply if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407).

Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

§ 228.11 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 miles and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 228.12 Effective dates.

Regulations in this subpart are effective for the period 1987 through 1991.

[47 FR 21254, May 18, 1982, as amended at 52 FR 1199, Jan. 12, 1987]

§ 228.13 Permissible methods.

(a) The incidental, but not intentional, taking of ringed seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization is permitted during the course of the following activities:

(1) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects; and

(2) Operation of transportation and camp facilities associated with seismic activities.

(b) All activities identified in § 228.13(a) shall be conducted in a manner which minimizes to the greatest extent practicable adverse effects on ringed seals and their habitat.

(c) All activities identified in § 228.13(a) shall be conducted as far as practicable from any observed ringed seal or ringed seal lair. No energy source shall be placed over an observed ringed seal lair, whether or not any seal is present.

§ 228.14 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, State, or local agency monitoring the impacts on ringed seals.

(b) Holders of Letters of Authorization shall designate an individual or individuals to make observations and record the presence of ringed seals and ringed seal lairs along shot lines and around camps, and the information required in § 228.14(c).

(c) An annual report shall be submitted to the Assistant Administrator for Fisheries within 90 days of completion of the year's activities which shall include the following information:

(1) Location(s) of survey activities;

(2) Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location;

(3) Numbers of ringed seals observed, proximity to seismic or associated activities, and any seal reactions observed for each location;

(4) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location; and

(5) Other information as required in a Letter of Authorization.

Subpart C—Taking of Marine Mammals Incidental to Space Shuttle Activities

SOURCE: 51 FR 11742, Apr. 7, 1986, unless otherwise noted.

EFFECTIVE DATE NOTE: At 51 FR 11742, Apr. 7, 1986, §§ 228.21 through 228.26 (Subpart C) were added, effective from May 7, 1986, through May 7, 1991.

§ 228.21 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of California sea lions (*Zalophus californianus*), northern sea lions (*Eumetopias jubatus*), northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and northern fur seals (*Callorhinus ursinus*) by U.S. citizens engaged in space shuttle activities at Vandenberg Air Force Base, California that result in focused sonic booms over the Northern Channel Islands off southern California.

§ 228.22 Effective dates.

These regulations are effective from May 7, 1986, through May 7, 1991.

§ 228.23 Permissible methods.

(a) The incidental, but not intentional, taking of seals and sea lions by U.S. citizens holding a Letter of Authorization is permitted during the course of the following activity: Space Shuttle Transportation System (STS) launches from Vandenberg Air Force Base, California.

(b) The activity identified in § 228.23(a) must be conducted in a manner which minimizes to the greatest extent possible adverse impacts on seals and sea lions and their habitat.

§ 228.24 Prohibitions.

(a) A take will not be authorized for those times of the year for which NMFS cannot determine that the incidental taking will have a negligible impact on marine mammals.

§ 228.25 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization (see § 228.6) are required to cooperate with the National Marine Fisheries Service and any other Federal, State, or local agency monitoring the impacts on seals and sea lions. The Holder must notify the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA, 213-548-2575, of any potential take at least two weeks prior to the launch in order to satisfy § 228.25(d).

(b) Holders of Letters of Authorization must designate an individual or individuals to observe and record the effects of focused sonic booms on seals and sea lions that inhabit the Northern Channel Islands.

(c) The pinniped populations on San Miguel Island must be monitored before, during and after the first two launches that produce focused sonic booms over San Miguel. Special attention must be paid to the effects on hearing in pinnipeds and their behavioral responses.

(d) At its discretion, the National Marine Fisheries Service may place an observer on San Miguel Island to monitor the research and sonic boom impact on the seals and sea lions.

(e) A report must be submitted to the Assistant Administrator for Fisheries within 90 days of any launch that produces a focused sonic boom over the Northern Channel Islands.

This report must include the following information:

(1) Date and time of the launch;

(2) Dates and locations of any research activities related to monitoring the effects of the focused sonic booms on pinniped populations;

(3) Results of any monitoring activities concerning hearing and behavioral responses.

(4) Results of any population studies made on pinnipeds on the Channel Islands before and after the launch.

§ 228.26 Modification of Letters of Authorization.

(a) In addition to the provisions of § 228.6, any substantive modifications of the Letters of Authorization will be made after notice and opportunity for public comment.

(b) The requirement for notice and public review in § 228.26(a) will not apply if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned or which significantly and detrimentally alters the scheduling of space shuttle launches.

SUBCHAPTER D—WHALING

PART 230—WHALING PROVISIONS

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AUTHORITY: Sec. 12, 64 Stat. 425; 16 U.S.C. 916j.

SOURCE: 33 FR 5953, Apr. 18, 1968, unless otherwise noted.

See also 45 FR 22949, Apr. 4, 1980.

CROSS REFERENCE: For the regulations of the International Whaling Commission, see Part 351 of this title.

DEFINITIONS

§ 230.1 Factoryship.

The word "factoryship" means a vessel in which or on which whales are treated or processed, whether wholly or in part.

§ 230.2 Land station.

The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

§ 230.3 Secondary processing land station.

The words "secondary processing land station" mean a factory on the land which receives from a land station for further processing any or all of those parts of whales which are required, by paragraph 12 of the Schedule of the Whaling Convention of 1946, as amended (§ 351.12 of this title), to be processed by boiling or otherwise.

§ 230.4 Whale catcher.

The words "whale catcher" mean a vessel used for the purpose of hunting, killing, taking, towing, holding on to, or scouting for whales.

§ 230.5 Whales.

(a) "Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e., any whale other than a toothed whale.

(b) "Blue whale" (Balaenoptera or Sibbaldus musculus) means any whale known by the name of blue whale, Sibbald's rorqual, or sulphur bottom.

(c) "Fin whale" (Balaenoptera physalus) means any whale known by the name of common finback, common rorqual, finback, finner, fin whale, herring whale, razorback, or true fin whale.

(d) "Gray whale" (*Rhachianectes glaucus* or *Eschrichtius gibbosus*) means any whale known by the name of gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(e) "Humpback whale" (*Megaptera nodosa* or *novaeangliae*) means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale, or hunchbacked whale.

(f) "Minke whale" (*Balaenoptera acutorostrata, B. Davidsoni, B. huttoni*) means any whale known by the name of lesser rorqual, little piked whale, minke whale, pike-headed whale, or sharp-headed finner.

(g) "Right whale" (*Balaena mysticetus, Eubalaena glacialis, E. australis,* etc.; *Neobalaena marginata*) means any whale known by the name of Atlantic right whale, Arctic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, Southern pigmy right whale, or Southern right whale.

(h) "Sei whale" (*Balaenoptera borealis*) means any whale known by the name of sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale and shall be taken to include Byrde's whale (*B. brydei*).

(i) "Sperm whale" (*Physeter catodon*) means any whale known by the name of sperm whale, spermacet whale, cachalot, or pot whale.

(j) "Toothed whale" means any whale which has teeth in the jaws.

§ 230.6 Whale products.

The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

LICENSES AND SCIENTIFIC PERMITS

§ 230.10 Licenses required to engage in whaling.

(a) No person shall engage in the taking or processing of any whales without first having obtained an appropriate license.

(b) No permit or license shall be issued except as provided in § 230.13 and §§ 230.70 through 230.77. Licenses issued under § 230.73 shall be governed solely by the requirements of §§ 230.70 through 230.77.

[36 FR 7432, Apr. 20, 1971, as amended at 45 FR 20488, Mar. 28, 1980]

§ 230.11 Applications for licenses.

(a) Applications for licenses to engage in the taking or processing of whales of the species listed in § 230.10, shall be submitted to the Bureau of Commercial Fisheries through the Regional Director, Pacific Northwest Region (Region 1), Bureau of Commercial Fisheries, 6116 Arcade Building, 1319 Second Avenue, Seattle, Wash. 98101. Such applications shall be accompanied by the affidavit or affidavits prescribed in sections 6(d) and (e) of the Whaling Convention Act of 1949 and by a check or U.S. Postal Money Order payable to the Bureau of Commercial Fisheries in the appropriate amount as prescribed by section 6(b) of the Whaling Convention Act of 1949 and as set out in § 230.12.

(b) Applicants for a license to operate a whale catcher must furnish by means of a letter to the Regional Director information specifying the names and addresses of the owner and operator of the vessel, the name, official number, and home port of the vessel, its length, beam, and draft, its gross and net tonnage, the horsepower of its engine, its maximum speed, the number of its crew members, and the basis of compensation for its gunners and crew, including the basis on which bonuses are awarded.

(c) Applicants for a license to operate a factoryship must furnish by means of a letter to the Regional Director information specifying the names and addresses of the owner and operator of the vessel, the name, official number and home port of the vessel, its length, beam, and draft, its gross and net tonnage, the horsepower of its engine, its maximum speed, the number of its crew, including whalers, the basis of compensation for its crew and whalers including the basis on which bonuses are awarded, and a list of its processing and manufacturing equipment.

(d) Applicants for a license to operate a land station must furnish by means of a letter to the Regional Director, information specifying the names and addresses of the owner and operator of the land station, the number of its employees, the basis of their compensation, including the basis on which bonuses are awarded, and a list of its processing and manufacturing equipment.

§ 230.12 Schedule of fees.

The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable:

(a) Land station licenses for primary processing of whales, $250.

(b) Land station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(c) Factoryship license for primary processing of whales delivered by whale catchers, $250.

(d) License for any vessel used exclusively for transporting whale products from a factoryship to a port during the whaling season, $100.

(e) Whale catcher license, $100.

(f) No license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

§ 230.13 Applications for scientific permits.

Applications for scientific permits to take, tag, or study whales for scientific investigations shall be submitted to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240. Scientific permits will be issued free of charge. Applicants for a scientific permit should also include with their application a statement of the specific objectives and operational procedures of their proposed scientific investigation. Upon completion of their research, a report of the results of such research, in triplicate, shall be submitted to the Director of the Bureau of Commercial Fisheries for transmittal to the International Whaling Commission in accordance with paragraph 3 of Article VIII of the International Convention for Regulation of Whaling of 1946.

Closed Seasons

§ 230.20 Whale catchers attached to land stations taking baleen whales.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of taking or killing any baleen whales except during the period April 15 to October 15, both days inclusive: *Provided*, That it is forbidden to kill or attempt to kill blue whales, by any means, in the following areas:

(1) The North Atlantic Ocean for 3 years ending on February 24, 1973.

(2) The North Pacific Ocean and its dependent waters north of the Equator for 5 years beginning with the 1971 season.

(3) In the waters south of the Equator: *Provided further*, That, it is forbidden to kill or attempt to kill humpback whales, by any means, in the following areas:

(4) In the North Atlantic Ocean for a period ending on November 8, 1972.

(5) In the North Pacific Ocean and its dependent waters north of the Equator for 3 years beginning with the 1971 season.

(6) In the waters south of the Equator.

[33 FR 5953, Apr. 18, 1968, as amended at 36 FR 7432, Apr. 20, 1971]

§ 230.21 Whale catchers attached to land stations taking sperm whales.

It is forbidden to use a whale catcher attached to a land station for the purpose of taking or killing sperm whales except during the period April 1, to November 30 following, both days inclusive.

§ 230.22 Whale catchers attached to factoryships taking sperm whales.

It is forbidden to use a factoryship or whale catcher attached thereto for the purpose of taking or treating sperm whales in the waters between 40° south latitude and 40° north latitude. For all other waters, it is forbidden to use factoryships or whale catchers attached thereto for the purpose of taking or treating sperm whales except during the period April 15 to December 15 following both days inclusive.

[36 FR 7432, Apr. 20, 1971]

CATCH QUOTAS

§ 230.25 Fin and sei whale quotas for the North Pacific.

Beginning with the 1971 season for taking baleen whales, it is forbidden for persons or vessels under the jurisdiction of the United States to take more than 40 fin whales and 51 sei whales from the waters of the North Pacific Ocean. The fin whale quota may be converted to sei and Bryde's whales combined, or vice versa, in terms of the formula as defined in paragraph 8(b) of the Schedule of the Convention: *Provided,* That the total catch of one or the other species does not exceed the level which is 10 percent (10%) above the quota for each species as prescribed above.

[36 FR 7432, Apr. 20, 1971]

§ 230.26 Sperm whale quota for the North Pacific Ocean.

Beginning with the 1971 season for taking sperm whales, it is forbidden for persons or vessels under the jurisdiction of the United States to take more than 75 sperm whales from the waters of the North Pacific Ocean and dependent waters.

[36 FR 7432, Apr. 20, 1971]

RECORDS AND REPORTS

§ 230.30 Records to be maintained on whale catchers.

There shall be maintained on each whale catcher a suitable log book or other record in which shall be recorded the following information, and such record shall be available for inspection by any person authorized by law or by this part to act as an inspector or enforcement officer, who shall be permitted to abstract therefrom such information as may be needed by the U.S. Government:

(a) The date and hour of the killing or capture of each whale;

(b) The point in latitude and longitude where each whale was killed or captured;

(c) The species of each whale killed or captured;

(d) The time of delivery of each whale to the land station or factoryship;

(e) Data specified under paragraphs (a), (b), and (c) of this section for each whale killed and later lost, or for some other reason not delivered to a factoryship or land station for processing, with an account of the circumstances surrounding such loss or nondelivery; and

(f) Any observations on migration of whales and on location of calving grounds.

§ 230.31 Records to be maintained on factoryships and at land stations.

(a) There shall be maintained in duplicate on board each factoryship and at each land station a detailed record of all whales received and processed as follows:

(1) Serial number of the whale (begin with number 1 on January 1 of each year).

(2) Species of the whale.

(3) Date and time killed and date and time received by the factoryship or land station.

(4) Sex of the whale.

(5) Length of the whale. (Whales must be measured when at rest on deck or platform, as accurately as possible by means of a steel tape measure fitted at the zero end with a spiked handle which can be stuck into the deck planking abreast of one end of the whale. The tape measure shall be stretched in a straight line parallel with the whale's body and read abreast the other end of the whale. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes. Measurements, after

being accurately read on the tape measure, shall be logged to the nearest foot, that is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. The measurement of any whale which falls on an exact half foot shall be logged at the next half foot, e.g., 76 feet 6 inches precisely shall be logged at 77 feet.)

(6) Sex of fetus if present.

(7) Length of fetus in feet and inches.

(8) A description of the stomach contents of the whale.

(9) Name of whale catcher which took the whale.

(10) Name of gunner who killed the whale.

(11) The exact location in which the whale was taken, stated in degrees and minutes of latitude and longitude.

(12) Under "Remarks" enter, if the whale is a female, whether lactating or milk-filled as well as abnormalities or peculiarities concerning the whale and the character and quantity of any portion of the whale transferred to a secondary processing plant.

(b) Each sheet of such reports shall be verified or approved by a person authorized by law or by this part to act as inspector or enforcement officer, and the said duplicate reports for each calendar year shall be submitted to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, within 30 days after the end of each calendar year.

§ 230.32 Records to be maintained at secondary processing land stations.

(a) There shall be maintained by all licensed secondary processing land stations receiving from land stations parts of whales for further processing a suitable ledger or book in which the following information shall be recorded, and such records shall be available for inspection by any authorized person:

(1) The kind and quantity of parts of whales received.

(2) The date of receipt thereof.

(3) The kind and quantity of products derived therefrom.

(b) Said ledger or book or certified true copies thereof shall be submitted in duplicate to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, within 30 days after the end of each calendar year.

§ 230.33 Report on employment, craft, and products of whaling operations.

The person or persons responsible for the operation of every factoryship, land station, and secondary processing land station shall annually submit in duplicate to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, within 30 days after the end of each calendar year, a report on employment, craft, and products, which shall show the number of persons employed, the nature of the task which each performs and the manner in which each is remunerated; the number and type of vessels and aircraft operated, including separate totals for surface vessels and aircraft; specifying, in the case of surface vessels, the average length and horsepower of whale catchers and the gross tonnage and horsepower of other vessels; and the quantity and type of products manufactured, including semiprocessed products delivered to secondary processing land stations. Such reports shall be subscribed and sworn to by the person or persons responsible for the operation of said factoryships, land station and secondary processing land station before a notary public or a person authorized by law or by this part to act as inspector or enforcement officer.

§ 230.34 Records retention period.

The record required to be maintained under the regulations of this part shall be retained by the person or persons responsible for their preparation and maintenance for a period of 6 months following the end of the calendar year to which such records apply.

SALVAGE OF UNCLAIMED WHALES

§ 230.40 No processing license required.

No license shall be required for the salvage and processing of any "daub val" or dead whale found upon a beach or stranded in shallow water, or of any unclaimed dead whale found floating at sea.

§ 230.41 Reporting of salvage of dead whales required.

(a) Any person or persons salvaging and/or processing any dead whale of any of the species enumerated in § 230.5 shall submit a report in writing to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, no later than within 30 days after the end of the then current calendar year.

(b) Such report shall show the date and exact locality in which such dead whale was found, its species and length, the disposition made of the whale, the firm utilizing or processing it, the products derived therefrom, and any other relevant facts.

MOLESTING OR UNAUTHORIZED INTERFERENCE WITH WHALES

§ 230.50 Molesting of whales prohibited.

The chasing, molesting, exciting, or interfering with, through the use of firearms or by any other manner or means, of any whale of the species listed in § 230.5 or of any other species protected by the provisions of the International Convention for the Regulation of Whaling of 1946, except for the purpose of hunting, killing, taking, towing, holding on to or scouting for whales in accordance with the provisions of the Convention, the regulations of the International Whaling Commission, and the regulations in this part, is prohibited. Persons violating this section shall upon arrest and conviction, be subject to the penalties imposed by the Whaling Convention Act of 1949.

INSPECTION AND ENFORCEMENT

§ 230.60 Fish and Wildlife Service employees designated as enforcement officers.

Any employee of the Fish and Wildlife Service duly appointed and authorized to enforce Federal laws and regulations administered by the Fish and Wildlife Service is authorized and empowered to act as a law enforcement officer for the purposes set forth in the Whaling Convention Act of 1949.

§ 230.61 State officers designated as enforcement officers.

Any employee of a State government who has been duly designated by the Director, Bureau of Commercial Fisheries, Department of the Interior, with the consent of the State government concerned, is authorized and empowered to act as a Federal law enforcement officer for the purposes set forth in the Whaling Convention Act of 1949.

§ 230.62 Disposal of perishable seized whales and whale products.

Any whales or whale products which are seized pursuant to the Whaling Convention Act of 1949 and which are deemed to be perishable, shall be preserved, processed, and sold as soon as possible under the direction and control of the Bureau of Commercial Fisheries. All proceeds from such sales shall be placed in escrow in any bank or in any manner as the Secretary of the Interior may direct pending the outcome of litigation.

SUBSISTENCE

AUTHORITY: Whaling Convention Act (WCA 16 U.S.C. 916a-1).

SOURCE: Sections 230.70 through 230.77 appear at 45 FR 20488, Mar. 28, 1980, unless otherwise noted.

§ 230.70 General.

No person shall hunt, strike, harass, kill or land a bowhead whale except in accordance with the Cooperative Agreement between the Administrator of the National Oceanic and Atmospheric Administration and the Alaska Eskimo Whaling Commission, dated March 26, 1981 and extended on February 28, 1982 (47 FR 20137 May 11, 1982), and the Alaska Eskimo Whaling Commission's Management Plan as referenced in that Agreement.

(Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), Whaling Convention Act, (16 U.S.C. 916, et seq.))

[47 FR 20137, May 11, 1982]

§ 230.71 Definitions.

As used in §§ 230.70 through 230.77 of this Part 230:

(a) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration;

(b) "Bowhead" means a whale of the Bering Sea stock of bowhead whales, *Balaena mysticetus;*

(c) "Calf" means any bowhead which is less than 21 feet in length as measured from the point of the upper jaw and the notch between the tail flukes;

(d) "Landing" means bringing a bowhead or any parts thereof onto the ice or land in the course of whaling operations;

(e) "Whaling captain" or "captain" means any Indian, Aleut, or Eskimo domiciled in a whaling village who is in charge of a vessel and a whaling crew;

(f) "Stinker" means a dead unclaimed bowhead found upon a beach, stranded in shallow water, or floating at sea;

(g) "Strike" means hitting a bowhead with a harpoon, lance, or explosive dart;

(h) "Whaling" means the hunting, striking, harassing, killing, or landing of bowheads, but does not include the salvage or processing of any stinker;

(i) "Whaling crew" means those persons under the control of a captain, who collectively participate as a unit in whaling;

(j) "Whaling village" means any of the villages of Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuigsut, and Kaktovik in the State of Alaska; and

(k) "Wasteful manner" means a method of whaling which is not likely to result in the landing of a struck bowhead or which does not include all reasonable efforts to retrieve the bowhead.

§ 230.72 Prohibited acts.

(a) No person shall engage in whaling except a whaling captain licensed pursuant to § 230.73 or a member of a whaling crew under the control of a captain.

(b) No whaling captain shall engage in whaling for any calf or any bowhead whale accompanied by a calf.

(c) No whaling captain shall engage in whaling in a wasteful manner.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in native subsistence whaling.

(f) No whaling captain shall continue to whale after, (1) the quota set forth in § 230.74 for his village of domicile is reached, or (2) the license under which he is whaling is suspended as provided in § 230.73(b), or (3) the Assistant Administrator has declared that the whaling season is closed pursuant to § 230.74(c).

(g) No whaling captain shall claim domicile in more than one whaling village.

(h) No person may salvage a stinker without complying with the provisions of § 230.75.

(i) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart which does not bear a permanent distinctive mark identifying the captain as the owner thereof.

§ 230.73 Licenses.

(a) A license is hereby issued to whaling captains.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with these regulations.

§ 230.74 Quotas.

(a) During the calendar year 1980, the quota for bowheads is allocated among whaling villages as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;

(2) Gambell—2 whales landed or 3 struck, whichever occurs first;

(3) Wales—1 whale landed or 1 struck, whichever occurs first;

(4) Kivalina—1 whale landed or 2 struck, whichever occurs first;

(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;

(6) Wainwright—2 whales landed or 3 struck, whichever occurs first;

(7) Barrow—5 whales landed or 7 struck, whichever occurs first;

(8) Kaktovik—2 whales landed or 3 struck, whichever occurs first;

(9) Nuigsut—1 whale landed or 1 struck, whichever occurs first;

(b) When the number of bowheads struck or landed by whaling captains domiciled in a whaling village equals the quota for such whaling village as set forth in paragraph (a) of this section, whaling by all captains domiciled in that whaling village shall cease. All license holders shall be notified promptly by the Assistant Administrator for Fisheries using all reasonable means of communication. Licenses held by whaling captains domiciled in a whaling village which has reached its quota shall not be valid after the quota for that whaling village has been reached.

(c) The Assistant Administrator for Fisheries shall monitor the bowhead whale hunt and keep tally of the number of bowheads landed and struck. When the number of bowhead whales landed or struck reaches the sum total of the village allocations set forth in § 230.74(a), the Assistant Administrator for Fisheries may declare that the whaling season is closed and there shall be no further whaling during the calendar year 1980. Closure shall become effective upon receipt by the FEDERAL REGISTER of notice by the Assistant Administrator for Fisheries that the season has been closed pursuant to this regulation.

(d) If for any reason the landing or struck quota for whaling villages is not reached, the part of the quota which remains may be reassigned by the Assistant Administrator to a second whaling village: Provided, that if any other whaling village has exceeded its quota, the Assistant Administrator shall not reassign the quota if he determines that it is likely to result in the total number of whales landed or struck exceeding the bowhead quota then in effect under the Schedule of the International Convention for the Regulation of Whaling. In making such reassignment, the Assistant Administrator shall consult with representatives of as many whaling villages as time reasonably permits.

§ 230.75 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He shall provide promptly to the Assistant Administrator or his representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.76 Reporting by whaling captains.

(a) A representative of the Assistant Administrator may request each whaling captain licensed pursuant to § 230.73 to provide written statement of his name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance and explosive dart. Representatives of the Assistant Administrator may provide each captain with a form approved by the Assistant Administrator to facilitate reporting under this paragraph.

(b) Each whaling captain shall provide to appropriate representatives, on request, an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing or a bowhead whale and where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing;

(2) The length (as measured from the point of the upper jaw and the notch between the tail flukes), the extreme width of the flukes, and the sex of the bowhead(s) landed;

(3) The length and sex of a fetus, if present in a landed bowhead whale;

(4) An explanation of circumstances associated with the striking or attempted striking of any bowhead whale not landed; and

(5) The number of bowhead whales sighted by the whaling captain or any member of the whaling crew.

§ 230.77 Penalties.

Any person who whales in contravention of these regulations, or violates any other provision of the Whaling Convention Act shall be subject to the penalties set forth in 16 U.S.C. 916e and 916f, and any other penalties provide by law.

SUBCHAPTER E—TRANSPORTATION OF FISH OR WILDLIFE

PART 246—MARKING OF CONTAINERS OR PACKAGES

Sec.
246.1 Marking requirement.
246.2 Alternatives and exceptions to the marking requirement.

AUTHORITY: 16 U.S.C. 3371-3378.

§ 246.1 Marking requirement.

Except as otherwise provided in this part, no person may import, export, or transport in interstate commerce any container or package containing any fish or wildlife (including shellfish) unless each container or package is conspicuously marked on the outside with both the name and address of the shipper and consignee and an accurate list of its contents by species and number of each species.

[52 FR 45341, Nov. 27, 1987]

§ 246.2 Alternatives and exceptions to the marking requirement.

(a) The requirements of § 246.1 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package containing fish or wildlife with the word "fish" or "wildlife" as appropriate for its contents, or with the common name of its contents by species, and

(ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment which accurately states the name and address of the shipper and consignee, states the total number of packages or containers in the shipment, and for each species in the shipment specifies:

(A) The common name that identifies the species [examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer]; and

(B) The number of that species (or other appropriate measure of quantity such as gross or net weight).

The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner which makes it readily accessible for inspection; or

(2) Affixing the shipper's wildlife import/export license number preceded by the three letters "FWS" on the outside of each container or package containing fish or wildlife if the shipper has a valid wildlife import/export license issued under authority of 50 CFR Part 14. For each shipment marked in accordance with this paragraph, the records maintained under § 14.93(d) must include a copy of the invoice, packing list, bill of lading, or other similar document which accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section. Provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section, or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of § 246.1 do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pur-

suant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.

(Approved by the Office of Management and Budget under control number 1018-0022)

[52 FR 45341, Nov. 27, 1987]

SUBCHAPTER F—AID TO FISHERIES

PART 250—FISHERIES LOAN FUND PROCEDURES

Subpart A—Introduction

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250.2 Definitions.
250.3 Loan authorization and priority.

Subpart B—Application

250.4 Eligibility.
250.5 Other requirements.
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Subpart C—Loans

250.7 Approval.
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250.9 Interest.
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250.12 Insurance.
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250.14 Books, records, and reports.

Subpart D—Default and Remedies

250.15 Default.
250.16 Remedies after default.

AUTHORITY: 70 Stat. 1121, as amended; 16 U.S.C. 742(c), as amended; and Reorganization Plan No. 4 of 1970.

SOURCE: 48 FR 23792, May 26, 1983, unless otherwise noted.

Subpart A—Introduction

§ 250.1 Purpose.

These regulations implement the latest extension of section 4 the Fish and Wildlife Act of 1956 as amended by the American Fisheries Promotion Act. The amended section 4 creates a revolving Fisheries Loan Fund to be used for assisting the owners or operators of commercial fishing vessels to avoid default on primary vessel financings and to cover vessel operating losses.

§ 250.2 Definitions.

For the purpose of this part, the following terms mean:

(a) *Secretary.* The Secretary of Commerce or his designee.

(b) *Act.* The Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742(c)).

(c) *State.* Any State, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(d) *Citizen of the United States.* Any individual who is a United States citizen by law, birth, or naturalization; any association, partnership, or corporation which meets the requirements of section 2 of the Shipping Act, 1916, for documenting vessels in the coastwise trade; or any State, agency of a State, or group of States.

(e) *National of the United States.* Any individual who is a United States national by law or birth or any association, partnership, or corporation which meets the requirements of section 2 of the Shipping Act, 1916, for documenting vessels in the coastwise trade (except that organization under the laws of American Samoa is permissible and individuals who are either nationals or citizens of the United States meet the Shipping Act requirements for the purpose of this Program).

(f) *Commercial fishing vessel.* Any waterborne craft documented under U.S. law or registered under State laws whose purpose is commercial fishing or assisting commercial fishing.

(g) *Fund.* The Fisheries Loan Fund authorized by 16 U.S.C. 742(c), as amended.

(h) *Obligation.* Any evidence of indebtedness.

(i) *Obligor.* Any owner or operator of a commercial fishing vessel who is primarily liable for payment of any obligation.

§ 250.3 Loan authorization and priority.

(a) Loans shall be made only for one of the following purposes:

(1) Assisting obligors to avoid default obligations financing the construction, reconstruction, reconditioning, or purchase of commercial fishing vessels of at least 5 net tons when those obligations are guaranteed by the Federal Government under the Fisheries Obligation Guarantee Program authorized by Title XI of the

Merchant Marine Act, 1936 (46 U.S.C. 1271 through 1280).

(2) Assisting obligors to avoid default on obligations financing the construction, reconstruction, reconditioning, or purchase of commercial fishing vessels of at least 5 net tons (i) when those obligations are not guaranteed under the Fisheries Obligation Guarantee Program, but; (ii) the vessels involved meet the use and documentation requirements, and the obligors meet the citizenship requirements, which would apply if the obligations had been guaranteed under the Fisheries Obligation Guarantee Program.

(3) Assisting the owners or operators of commercial fishing vessels of any size where there has been, or may be, a net operating loss.

(4) To the extent funds are available and consistent with any limitations on apportionments made by the Office of Management and Budget, the first priority for loans is paragraph (a)(1) of this section, and the second priority for loans is paragraph (a)(2) of this section. Any monies not required for paragraphs (a)(1) and (a)(2) will be used for paragraph (a)(3) of this section.

[48 FR 23792, May 26, 1983, as amended at 50 FR 7921, Feb. 27, 1985]

Subpart B—Application

§ 250.4 Eligibility.

An eligible applicant must be a citizen or national of the United States and must:

(a) Reside or conduct business in any State;

(b) Own or operate a commercial fishing vessel used for commercial fishing operations; and

(c) Demonstrate that he has substantial experience and proven ability in the management and financing of fishing operations and that the loan is likely to result in the continued viability of the commercial fishing operation. In making this determination, the Secretary shall consider, among other factors, economic conditions within any fishery, the negative financial effect these conditions may have had, and the uncertainty these conditions may cause over the longer term.

(Approved by the Office of Management and Budget under control number 0648-0133)

[48 FR 23792, May 26, 1983, as amended at 48 FR 57302, Dec. 29, 1983]

§ 250.5 Other requirements.

(a) The applicant must demonstrate at the time of application that the loan applied for is not otherwise available at reasonable rates which permit continued operation. The loan applied for shall be deemed to be otherwise available at reasonable rates which permit continued operation unless an applicant can show:

(1) Proof of at least two refusals of the desired credit from the applicant's bank. This proof of refusal must be dated and state the amount of loan and terms requested.

(2) That the desired credit is otherwise unavailable on reasonable terms from sources other than banks, as from:

(i) The disposal at a fair price of assets not required by the applicants in the conduct of his business or not reasonably necessary to its potential growth, (ii) use of personal credit and/or resources of the owner, partners, management, affiliates, or principal stockholders of the applicant, or (iii) from other known sources of credit.

(b) Bank refusals to advance credit will not be considered the full test of credit unavailability where there is reason to believe that credit is otherwise available on reasonable terms from sources other than banks. Nevertheless, in the case of an application by an obligor whose obligation is guaranteed under the Fisheries Obligation Guarantee Program, proof of the refusal of the obligor's bank and at least one other source to extend further credit on behalf of the obligor may constitute proof that the credit applied for is not otherwise available on reasonable terms.

§ 250.6 Application processing and procedures.

(a) Applicants for loans under § 250.3(a)(1) may apply at any time (the Fund will, however, expire on September 30, 1983). Applicants for loans under § 250.3(a)(2) may apply only during such open seasons as the

Secretary provides by further notice. In the event monies become available under § 250.3(a)(3), open seasons will be established by further notice. Available monies for all purposes may be regionally apportioned and maximum loan amounts will be established by further notice. Restrictive application criteria will be established by further notice for loan applications under § 250.3(a)(2).

(b) *Forms.* Applicants must file an application, furnished by the National Marine Fisheries Service, with the Regional Branch of the National Marine Fisheries Service's Financial Services Division in the Region in which the applicant conducts his business. The Regional Offices' addresses follow:

(1) *Northeast Region.* (Maine, Massachusetts, Rhode Island, Connecticut, New Hampshire, New York, New Jersey, Delaware, Maryland, Virginia, and the Great Lakes States): Financial Services Branch, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930, (617) 281-3600.

(2) *Southeast Region.* (North Carolina, South Carolina, Georgia, Flordia, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, Virgin Islands): Financial Services Branch, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, (813) 893-3148.

(3) *Southwest Region.* (California, Hawaii, American Samoa, Guam, Trust Territory of Pacific Islands): Financial Services Branch, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2478.

(4) *Northwest Region.* (Washington, Oregon, Alaska): Financial Services Branch, National Marine Fisheries Service, 7600 Sandpoint Way, NE (BIN C15700) Seattle, Washington 98115, (206) 446-6118.

(c) *Processing of applications.* If the application is materially complete and the applicant is eligible, the Regional Financial Services Branch will accept the application and assign it a case number. Applications under § 250.3(a)(2) will be considered in the order of their submission. Applications received after available monies are exhausted will not be considered. The Regional Financial Services Branch will evaluate applications being considered for funding. After a decision is made, the Regional Financial Services Branch will inform the applicant.

Subpart C—Loans

§ 250.7 Approval.

(a) The Secretary will approve the loan by a loan authorization letter covering the terms and conditions of the loan.

(b) Loan documents will be furnished by the Secretary. Applicants whose applications are not approved will be notified by a letter from the Financial Services Branch.

§ 250.8 Amount of loan and other restrictions.

Loan amounts may be limited from time to time in order to prevent exhaustion of available loan monies and to assure that monies will be used effectively. The amount any one borrower, or related borrowers, may borrow will be restricted. Only principals may apply. Restrictions regarding length of fisheries experience and other factors will be established by further notice. Loan amount limitations and other requirements will be effected by instructions from the Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C.

§ 250.9 Interest.

The rate of interest on all loans made under § 250.3 (a)(1) and (a)(2) will be 3 percent. Interest rates on loans made under § 250.3(a)(3) will be the rate prevailing for loans made under the Emergency Agricultural Credit Act of 1978 (7 U.S.C. preceding 1961 note).

§ 250.10 Maturity.

The maturity of any loan will be determined by the Secretary, but may not exceed 10 years.

§ 250.11 Security.

Loans will be approved only upon the furnishing of such security or other reasonable assurance of repayments as the Secretary may require.

§ 250.12 Insurance.

If insurance is required on property under the terms of a loan, it must be in a form, and from an underwriter, satisfactory to the Secretary.

§ 250.13 Inspection of property.

The Secretary shall have access at all reasonable times to all vessel or other property in connection with a loan or loan application.

§ 250.14 Books, records, and reports.

The Secretary shall have the right to inspect the applicant's books and records, including tax returns. The Secretary may also require periodic reports to be submitted by a loan recipient.

(Approved by the Office of Management and Budget under control number 0648-0133)

[48 FR 23792, May 26, 1983, as amended at 48 FR 57302, Dec. 29, 1983]

Subpart D—Default and Remedies

§ 250.15 Default.

The borrower's failure to conform to the Act, these regulations, or the loan documents will be a default. The Secretary's remedy for defaults is acceleration of the total loan amount due, foreclosure on security, and pursuit of all other collection avenues. Default may result in discontinuance of any further disbursement of loan funds to the borrower.

§ 250.16 Remedies after default.

Specific provisions governing remedies after default will be included in the loan documents. Upon default, the Secretary may:

(a) Take possession of all collateral given as security for the loan;

(b) Initiate legal proceeding of any type against the borrower or the security, including foreclosure; and

(c) Pursue all other available remedies.

PART 251—FINANCIAL AID PROGRAM PROCEDURES

Subpart A—General Policy

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251.22 Fishery for American lobster (Homarus Americanus) in the Gulf of Maine.
251.23 Fishery for salmon in Washington, Oregon, and California.
251.24 Fishery for king crab in Alaska.
251.25 Fishery for surf clams.
251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder)

AUTHORITY: Sec. 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742) Title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279) sec. 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1177) National Environmental Policy Act, 42 U.S.C. 4321-4347; and Reorganization Plan No. 4 of 1970, 86 Stat. 909.

SOURCE: 38 FR 29328, Oct. 24, 1973, unless otherwise noted.

Subpart A—General Policy

§ 251.1 Definitions.

For the purposes of this part, the following terms shall be construed as follows:

(a) *Secretary.* This term means the Secretary of Commerce or his delegate.

(b) *Director.* This term means the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration or his delegate.

(c) *State.* This term means the several States of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

(d) *Agency.* This term means any Federal, State, or local Government, or International Organization to which the United States is a party, or any combination thereof, duly authorized to carry out functions related to the Fisheries Resources or the Fishing Industry.

(e) *Fisheries resources.* This term means any form, or forms, of animal or plant life found in the aquatic environment.

(f) *Fishing industry.* This term means a part, or parts, of the economic systems of labor and capital, directly or indirectly, deriving revenue from activities related to the Fisheries Resources.

(g) *Fishery.* This term means a part of the Fishing Industry engaged in harvesting a specific part, or parts, of the Fisheries Resources for commercial purposes.

(h) *Management.* This term means Agency activities related to assisting the Fishing Industry or protecting the Fisheries Resources.

(i) *Conditional fishery.* This term means a Fishery in which National Marine Fisheries Service financial assistance for fishing vessels will be approved only under provisional terms consistent with needs and objectives of Management, as determined by the Director. The terms under which financial assistance related to a Conditional Fishery may be approved will be set forth in the regulations for each program. (See § 251.2(c).)

§ 251.2 Scope and purpose.

(a) This part will provide for the central filing of (1) the Administrator's policy related to restricting the use of financial assistance programs in certain fisheries, (2) notices of proposed rule making, (3) locations of principal offices where the public may obtain information related to the functions cited in paragraph (b) of this section and the regulations cited in paragraph (c) of this section.

(b) This part sets forth policy and procedures under which the Director will perform his general responsibilities related to the following:

(1) The functions in section 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742c), which relate to the "Fisheries Loan Fund" for the purpose of providing financial assistance to commercial fisheries.

(2) The functions in section 607 of the Merchant Marine Act, 1936, as amended by the Merchant Marine Act of 1970 (46 U.S.C. 1177), which relate to the creation of "Capital Construction Funds" including tax deferrals, under certain conditions, to those owning or leasing vessels which are operated in the fisheries of the United States.

(3) The functions in Title XI of the Merchant Marine Act, 1936, as amended, and as amended by the Federal Ship Financing Act of 1972 (46 U.S.C. 1271 through 1279) which relate to the guarantee of certain obligations for, among other things, the construction, reconstruction or reconditioning of fishing vessels.

(4) The functions in section 4331 of the National Environmental Policy Act (42 U.S.C. 4331), which relate to the responsibility of the Federal Government to improve and coordinate Federal programs, including financial assistance, that impact on the natural environment.

(c) *Cross references.* (1) For regulations relating to the functions quoted in paragraph (b)(1) of this section see Part 250 of this chapter governing Fisheries Loan Fund Procedures.

(2) For regulations relating to the functions quoted in paragraph (b)(2) of this section see Part 259 of this chapter governing Capital Construction Funds.

(3) For regulations relating to the functions quoted in paragraph (b)(3) of this section see Part 255 of this chapter governing Fishing Vessel Obligation Guarantee Procedures.

§ 251.3 Policy.

(a) Section 742(f) of the Fish and Wildlife Act of 1956, as amended, provides, in part, that the Secretary shall (1) consider and determine the policies and procedures that are necessary and desirable in carrying out efficiently and in the public interest the laws relating to fish; (2) develop and recommend measures which are appropriate to assure the maximum sustainable production of fish and fishery products and to prevent unnecessary and excessive fluctuations in such production; and (3) take such steps as may be required for the development, advancement, management, conservation, and protection of the fisheries resources.

(b) Under Title XI of the Merchant Marine Act, 1936, as amended, no commitment to guarantee an obligation shall be made by the Secretary unless he finds that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources.

(c) Section 607(a) of the Merchant Marine Act, 1936, as amended, provides, in part, that the deposits in a Capital Construction Fund, and all withdrawals from the Fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary of Commerce may by regulation prescribe or as are set forth in such agreement. Regulations under Part 259 of this chapter related to "Capital Construction Funds" and qualified withdrawals from an Interim Fund established for fishing vessels under the Merchant Marine Act, 1936, as amended. Under existing Interim Agreements, the Secretary may determine that withdrawals which would add fishing vessels to an existing fleet in a fishery will be inconsistent with the wise use of the fishery resource involved, and inconsistent with the development, advancement, management, conservation, or protection of that resource, and therefore may from time to time withhold his consent to the qualification of such withdrawals. The form of existing Interim Agreement appears in 36 FR 19699, October 9, 1971.

(d) Section 4331 of the National Environmental Policy Act, provides, in part, that the Federal Government use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal programs to the benefit of the Nation.

§ 251.4 Policy interpretations and determinations.

(a) The Director will interpret and apply, to the extent practicable, the language quoted in paragraphs (a), (b), (c), and (d) of § 251.3, to administer financial assistance programs in a manner which, on balance, will be consistent with the needs and objectives of Management related to each Fishery.

(b) It is recognized that (1) the Fisheries Resources, upon which the Fishing Industry depends, are renewable but limited with respect to yield; (2) the Fisheries Resources are subject to increasing fishing pressures and uncertainties; (3) management must be strengthened to produce desired benefits from the Fisheries Resources; and (4) it would not be a wise and efficient use of financial assistance programs to encourage the introduction of vessels into a Fishery classified as a Conditional Fishery in this part.

(c) The National Marine Fisheries Service shall, under procedures established, or to be established, by the Director, maintain a continuing review of all Fisheries Resources for the purpose of determining a Fishery which may be in need of regulation as a Conditional Fishery to carry out the policy, intent, and purposes of this part.

(d) The Director shall take actions to publish notices of proposed rulemaking related to a Fishery being considered for regulation as a Conditional Fishery under this part. The public and Agency officials shall be given 90 days to comment on such notices of proposed rulemaking.

(e) In any case when it is determined that a Fishery is to be regulated as a Conditional Fishery under this part and a regulation related to that Conditional Fishery is to be adopted, such regulation, to be incorporated in Subpart B of this part, shall be published in the FEDERAL REGISTER, after 90 but within 180 days of the date the notice of proposed rulemaking with respect to such Fishery was published as set forth in paragraph (d) of this section.

(f) Findings and determinations made by the Director in accordance with this part will be based on source materials related to Management and the Fishery under consideration and made available through procedures as set forth in this part.

(g) Findings and determinations for financial assistance applications related to fishing vessels operating in a Fishery not yet regulated as a Conditional Fishery in this part may be made under existing delegations of authority. Such findings and determinations shall be (1) based on an evaluation of available information related to Management and the particular Fishery under consideration, (2) made using the guidelines and criteria as set forth in §§ 251.8 and 251.9 of this part, and (3) consistent with the policy, intent and purposes of this part.

(h) Amendments to, or revisions of, this part may be made when new information becomes available, or at any time, to add or to delete a Conditional Fishery from this part.

§ 251.5 Organization.

(a) The National Oceanic and Atmospheric Administration (NOAA) is a component of the Department of Commerce.

(b) The National Marine Fisheries Service (NMFS), a component of NOAA, has responsibility to carry out generally the functions quoted in this part.

§ 251.6 Principal offices of the National Marine Fisheries Service.

(a) The mailing address of the Office of the Director, NMFS, is:

Director
National Marine Fisheries Service
3300 Whitehaven Street NW.
Washington, DC 20235

(b) Mailing addresses of the Offices of the Regional Directors, NMFS, are:

Director, Northwest Region
National Marine Fisheries Service
1700 Westlake Avenue North
Seattle, Washington 98109

Director, Southeast Region
National Marine Fisheries Service
Duval Bldg.
9450 Gandy Blvd.
St. Petersburg, Florida 33702

Director, Northeast Region
National Marine Fisheries Service
Federal Building
14 Elm Street
Gloucester, Massachusetts 01930

Director, Southwest Region
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, California 90731

Director, Alaska Region
National Marine Fisheries Service
P.O. Box 1668
Juneau, Alaska 99801

§ 251.7 Information sources and needs.

(a) Information for consideration under this part should relate to the Fisheries Resources, the Fishing Industry, and Management relative to the Fishery under consideration for regulation as a Conditional Fishery.

(b) All sources that may be anticipated to provide fair and reasonable information should be explored.

(c) Information should include, but not be limited to, material in the following general classifications: (1) Environmental, (2) biological, (3) economic, (4) social, (5) legal, (6) international, and (7) national interests.

§ 251.8 Evaluation guidelines.

(a) For each Fishery under consideration for regulation as a Conditional fishery general guidelines for evaluation will be conditions that exist relating to each Fishery and (1) international fishery agreements or conventions, to which the United States is a party, dealing with fishery conservation or management, (2) Agency regulations dealing with fishery conservation or management, (3) the available data base, (4) proposed designated areas or zones, (5) the current and projected status of the existing fishing fleet, (6) the harvesting activities of fishing vessels engaged in that Fishery, (7) foreign competition, (8) Management, and (9) other relevant factors.

§ 251.9 Evaluation criteria.

(a) For each Fishery under consideration to be regulated as a Conditional fishery the Director will evaluate (1) related information received from interested parties, (2) related environmental factors, (3) the history, present status, and prospective developments related to the Fishery, (4) conditions that may be necessary for reasonable improvement of a depressed Fishery, (5) conditions that may be necessary for reasonable stability of an economically and environmentally sound Fishery, (6) conditions that could contribute to adverse fluctuations or declines in yield, (7) the need to improve the economic efficiency of the fishing fleet, (8) the need to assure for fishermen safe and healthful fishing vessels, (9) the need to improve the engineering efficiency of the fishing vessels operating in the Fishery, (10) social needs, and (11) information and data on hand related to that Fishery.

Subpart B—Conditional Fisheries

§ 251.20 Fishery for yellowfin tuna in the area regulated by the Inter-American Tropical Tuna Commission.

[39 FR 25325, July 10, 1974]

§ 251.21 Fishery for salmon in Alaska.

[39 FR 34053, Sept. 23, 1974]

§ 251.22 Fishery for American lobster (Homarus Americanus) in the Gulf of Maine.

[40 FR 43734, Sept. 23, 1975]

§ 251.23 Fishery for salmon in Washington, Oregon, and California.

[40 FR 43734, Sept. 23, 1975]

§ 251.24 Fishery for king crab in Alaska.

[40 FR 43508, Sept. 22, 1975]

§ 251.25 Fishery for surf clams.

[42 FR 35854, July 12, 1977]

§ 251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder).

[44 FR 4495, Jan. 22, 1979]

PART 253—INTERJURISDICTIONAL FISHERIES

Sec.
253.1 Purpose and scope.
253.2 Definitions.
253.3 Apportionment.
253.4 State projects.
253.5 Other funds.
253.6 Administrative requirements.

AUTHORITY: 16 U.S.C. 4101 *et seq.*

SOURCE: 53 FR 20325, June 3, 1988, unless otherwise noted.

§ 253.1 Purpose and scope.

(a) The purpose of this part is to implement Title III of Pub. L. 99-659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(b) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resource in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

§ 253.2 Definitions.

As used in this part, terms have the meaning ascribed in this section.

Act means the Interjurisdictional Fisheries Act of 1986, Pub. L. 99-659 (Title III).

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(a) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise, or

(b) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a State agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and State laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(a) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the EEZ; or

(b) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(c) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more States, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more State agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member States of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

Landed means the first point of offloading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his designee.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.

State Agency means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.

§ 253.3 Apportionment.

(a) *Apportionment formula.* The amount of funds apportioned to each State is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the States during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\textit{Volume of X State}}{\text{Volume of all States}} = \text{A percent} \qquad \frac{\textit{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[A\,\% + B\,\%]}{2} = \text{State percentage used to determine State's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each State's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct Regional Directors to promptly notify states of funds' availability.

(b) Beginning with fiscal year 1989, no State, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) is less than one-third of one percent, that State may receive funding if the State:

(1) Is signatory to an interstate fishery compact; or

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior; or

(3) Borders one or more of the Great Lakes; or

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any State that has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraphs (c) (1), (2), (3), (4) or (5) of this section may receive an apportionment for any fiscal year which is not less than one half of one percent of the total amount of funds available for apportionment for such fiscal year.

(e) No State may receive an apportionment under this section for any fiscal year which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) *Unused apportionments.* Any part of an apportionment for any fiscal year to any State:

(1) That is not obligated during that year;

(2) With respect to which the State notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the State, may not be considered to be appropriated to that State and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a State referred to in this subsection is irrevocable.

[53 FR 20325, June 3, 1988; 53 FR 22609, June 16, 1988]

§ 253.4 State projects.

(a) *General*—(1) *Designation of State agency.* The Governor of each State shall notify the Secretary which agency of the State government is authorized under its laws to regulate commercial fisheries and is therefore designated to submit applications and to enter into financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(2) States which choose to submit proposals in any fiscal year must so

notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any State may, through its State agency, submit to the NMFS Regional Director a proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate State(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any State, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to:

(1) Soundness of design;

(2) Possibilities of securing productive results;

(3) Minimization of duplication with other research projects in supporting management of interjurisdictional fishery resources and carried out under this title or under any other law or regulation;

(4) Organization and management of the project;

(5) Methods proposed for monitoring and evaluation of the success or failure of the project, and

(6) Consistency of the project with the purposes specified in § 253.1.

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this title, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The State has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies; in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an Interstate Commission, to such Commission and the State.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this title may be applied only to projects for which a proposal has been evaluated under § 253.4(b) and approved by the Secretary, except that up to $25,000 each fiscal year may be awarded to a State out of the State's regular apportionment to carry out an enforcement agreement, as defined under § 253.2. An enforcement agreement does not require State matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable State laws or regulations except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 253.5 Other funds.

(a) *Funds for disaster assistance.* The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the States amount under the apportionment formula in § 253.3(a) will qualify for funding under this section.

(b) *Funds for interstate commerce.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions. The Commissions may submit proposals for these funds. Activities involved in the development of Interstate fishery management plans include, travel, support, meeting costs, research, or other general activities related to the development and maintenance of inter-State fishery management plans.

§ 253.6 Administrative requirements.

All grants and cooperative agreements made as a result of the Act are subject to Federal policies and guidance on financial assistance contained in Executive orders, OMB circulars and regulations; Department of Commerce regulations and directives, NOAA directives; and terms and conditions of the awards.

PART 255—FISHERIES OBLIGATION GUARANTEE PROGRAM

Sec.

255.1 Purpose.
255.2 Definitions.
255.3 Applications.
255.4 Citizenship requirements.
255.5 Project requirements.
255.6 Guarantee limits, debt maturities, and interest rates.
255.7 Fishing industry ability and experience.
255.8 Economic soundness.
255.9 Financial requirements.
255.10 Collateral.
255.11 Miscellaneous requirements.
255.12 Fees.
255.13 Demands and payment.
255.14 Default/liquidation of collateral.
255.15 Program guidelines.
255.16 Applicability of rules.

AUTHORITY: 46 U.S.C. 1271-1279.

SOURCE: 47 FR 57435, Dec. 23, 1982, unless otherwise noted.

§ 255.1 Purpose.

These rules govern guaranteed financing for fishing vessels and fisheries shoreside facilities under the provisions of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 through 1279), as amended by the American Fisheries Promotion Act (Pub. L. 96-561). The purpose of the Fisheries Obligation Guarantee Program is to make long-term financing available to the United States fishing industry by providing a U.S. Government guarantee of repayment of the debt portion of fishing vessel and shoreside facility construction, reconstruction, reconditioning, or (where eligible) purchasing costs.

§ 255.2 Definitions.

(a) *Act* means Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271 through 1279).

(b) *Actual cost* means the total amount paid or owed by an obligor for the construction, reconstruction, reconditioning or (where eligible) purchase of fishing vessels or fisheries shoreside facilities.

(c) *Agency* means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) *Chief, Financial Services Division* means the Chief, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his designee.

(e) *Citizen of the Northern Mariana Islands* means:

(1) Any individual who is a citizen of the Northern Mariana Islands (and qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands);

(2) Any corporation formed under the laws of the Northern Mariana Islands, if at least 75 percent of it is owned by individuals specified in paragraph (e)(1) of this section or citizens or nationals of the United States; or

(3) Any partnership or other form of association, if all the general partners and at least 75 percent of all partners are individuals specified in paragraph

(e)(1) of this section or citizens or nationals of the United States.

(f) *Citizen or national of the United States* means:

(1) Any individual who is a citizen of the Northern Mariana Islands or a citizen or national of the United States of America;

(2) Any corporation, if at least 75 percent of it is owned by citizens of the Northern Mariana Islands or by citizens or nationals of the United States of America within the meaning of the provisions of section 2 of the Shipping Act, 1916 (46 U.S.C. 802); or

(3) Any partnership or association, if all the general partners, and at least 75 percent of all partners, are citizens of the Northern Mariana Islands or citizens or nationals of the United States of America.

(g) *Conditional fishery* means any fishery which has been declared as conditional under 50 CFR Part 251.

(h) *Contribute to the development of the U.S. fishing industry* means any project which:

(1) Enables fishing vessels to reduce harvests in conditional fisheries;

(2) Applies new technology;

(3) Makes any fisheries operation afloat or ashore more efficient, productive, or competitive;

(4) Has a potential for increasing fisheries exports;

(5) Aids in the development of an underutilized fishery; or

(6) In any other demonstrable way, contributes to the stability, growth, productivity, or development of the U.S. fishing industry.

(i) *Depreciated actual cost* means the actual cost of a fishing vessel or fisheries shoreside facility, depreciated (excluding land, which is not depreciable) on a straightline basis at one-year intervals over the vessel or facility's economically useful life, less a 10 percent salvage value.

(j) *Economically useful life* means the period during which the fishing vessel or fisheries shoreside facility, with proper maintenance, will remain economically productive.

(k) *Fish* means all forms of aquatic animal and plant life other than marine mammals and birds.

(l) *Fisheries shoreside facility* means any land, or structure or equipment on land, used for unloading, receiving, holding, processing, or distributing fish of every kind (including fish caught as a result of commercial passenger carrying fishing operations). This term does not include:

(1) Office furniture, equipment, or supplies;

(2) Any rolling equipment which will be used outside the primary production site;

(3) Any other non-fixed equipment which should be financed either from working capital or by the proceeds of short-term financing from other sources; or

(4) Any facility where more than 49 percent of the gross income is projected to be from the retail selling of fish or fisheries products or from anything else other than the unloading, receiving, holding, processing, or distribution of fish.

(m) *Fishing vessel* means any vessel, boat, ship, or other craft which is documented under United States law and is used for, equipped to be used for, or of a type which is normally used for commercial fishing (including commercial passenger carrying fishing vessels) or aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing (including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing).

(n) *Obligee* means the party who lends the proceeds of a guaranteed obligation or invests in a guaranteed obligation.

(o) *Obligor* means the party who borrows the proceeds of a guaranteed obligation.

(p) *Program* means the Fisheries Obligation Guarantee Program under Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271 through 1279).

(q) *Project* means a construction, reconstruction, reconditioning, or (where eligible) purchase of fishing vessels or fisheries shoreside facilities, whose financing will be guaranteed under the Program.

(r) *Reconstruction or reconditioning* means any improvements of used fishing vessels or fisheries shoreside facilities provided that:

(1) At least 75 percent of improvement expenditures are capital, rather than expense, items;

(2) The improved vessel or facility will have an economically useful life of at least 10 years (or longer if the term of the proposed financing for which a guarantee is sought is longer), but specific equipment involved in a reconstruction or reconditioning may individually have economically useful lives of less than 10 years;

(3) The improved vessel or facility will be fit and sufficient for its intended operation; and

(4) The improvement project involves more than routine repair or maintenance.

(s) *Secretary of Commerce* means the Secretary of Commerce, or his designee.

(t) *State* means any State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, any other commonwealth, territory, or possession of the United States of America, or any political subdivision of any of the above.

(u) *Underutilized fishery* means:

(1) Any species of fish for which foreign fishing within the U.S. Fishery Conservation Zone is permitted or any species of fish within or without such zone for which a demonstration can be made that such species is not fully utilized by U.S. fishing vessels (including species designated as underutilized by states under whose fishery management jurisdiction those species fall); or

(2) For fisheries shoreside facilities, any facility which will utilize the species defined in paragraph (u)(1) of this section, or any facility for which a demonstration can be made that existing fisheries shoreside facilities are inadequate to fully, properly, or efficiently utilize fishing vessel production, regardless of the species involved.

§ 255.3 Applications.

Applications for a program guarantee should be submitted to the Agency office listed below which corresponds to the region in which the proposed project will operate:

National Marine Fisheries Service, Northeast Region, Financial Services Branch, Post Office Building, Box 1109, Gloucester, Massachusetts 01930 (617) 281-3600
National Marine Fisheries Service, Northwest Region, Financial Services Branch, 7600 Sand Point Way, NE., Bin C15700, Seattle, Washington 98115 (206) 527-6122
National Marine Fisheries Service, Southwest Region, Financial Services Branch, 9450 Koger Blvd., Duval Bldg., St. Petersburg, Florida 33702 (813) 893-3148
National Marine Fisheries Service, Southwest Region, Financial Services Branch, 300 South Ferry Street, Terminal Island, California 90731 (213) 548-2478

Application forms are obtainable from the offices listed above. *All potential applicants should discuss their project with a regional Program officer before submitting an application.*

§ 255.4 Citizenship requirements.

Any citizen or national of the United States is eligible to apply for a guarantee under the Program.

(Approval by the Office of Management and Budget under control number 0648-0012 is pending)

[47 FR 57435, Dec. 23, 1982, as amended at 48 FR 57302, Dec. 29, 1983]

§ 255.5 Project requirements.

(a) *Qualifications for program guarantees.* Program guarantees are available for financings (including reimbursement of obligors for expenditures previously made) for the construction, reconstruction, reconditioning, or (where eligible) purchase of any fishing vessel documented under United States law or any fisheries shoreside facility located anywhere in any State of the United States.

(b) *Used fishing vessels and fisheries shoreside facilities.* Financing of the purchase cost of any used fishing vessel or fisheries shoreside facility may be guaranteed only if the vessel or facility will (1) aid in the development of an underutilized fishery or (2) contribute to the development of the U.S. fishing industry and be reconstructed or reconditioned in the United States.

(c) *Conditional fisheries.* Program guarantees are available for financing the construction of a new fishing vessel which will operate in a conditional fishery, or which will result in the transfer of a used vessel into operation in a conditional fishery, only if one of the following conditions is met:

(1) The vessel whose financing is guaranteed (despite the fact that it will operate in a conditional fishery) is also fully equipped for, and fully capable of, operating in an underutilized fishery;

(2) The vessel involved will replace a vessel of comparable fishing capacity which had operated in the conditional fishery prior to the designation of such fishery as conditional;

(3) The vessel whose financing is guaranteed was contracted for prior to the designation of the fishery in which it will be operated as conditional;

(4) The financing to be guaranteed will be used for the reconstruction or reconditioning of a vessel already operating in the conditional fishery; or

(5) The application for Program guarantee had been submitted prior to the designation as conditional of the fishery in which the vessel will be operated. See 50 CFR Part 251 for those fisheries which are designated as conditional.

(d) *Eligibility for vessels or facilities which will be used in underutilized fisheries.* In order for the financing of a fishing vessel or fisheries shoreside facility to be eligible for a Program guarantee because such vessel or facility will be used in an underutilized fishery (including the underutilized fisheries aspects of the conditional fisheries requirements), such vessel or facility must be fully equipped for, and be fully capable of, operating in an underutilized fishery. This determination will be made by the Chief, Financial Services Division, at the time of Program guarantee approval. The Obligor will be required to execute an agreement to operate the vessel in the underutilized fishery.

§ 255.6 Guarantee limits, debt maturities, and interest rates.

(a) *Actual cost.* In addition to the cost of construction, reconstruction, reconditioning, or (where eligible) purchase of a fishing vessel or fisheries shoreside facility, the actual cost of such a vessel or facility may also include:

(1) Reasonable architectural, engineering, or inspection expenses incurred with regard to the vessel or facility before completion;

(2) Reasonable expenses for interest on debt incurred to finance the vessel or facility during its construction, reconstruction, or reconditioning;

(3) The reasonable expenses of any contract for consulting services to assess the financial, economic, or technical feasibility of a vessel or facility or its fitness and sufficiency, *if such services are required by the Chief, Financial Services Division, as a precondition to a decision about the approval of a guarantee.*

(4) Dredging or other costs deemed by the Program to be necessary. Actual costs do not include any other expenses which cannot be capitalized under generally accepted accounting principles (except acceptable items for repair or maintenance *associated with* reconstruction or reconditioning).

(b) *Guarantee limits.* The Program shall guarantee 80 percent of financings representing no more than 87½ percent of the actual cost or depreciated actual cost of construction, reconstruction, reconditioning, or (where eligible) purchase of fishing vessels or fisheries shoreside facilities. On a case-by-case basis for vessels or facilities previously guaranteed under the Program, the Program may guarantee 100 percent of financings representing up to 87½ percent of the cost of the vessels or facilities.

(c) *Debt maturities.* Debt maturities on obligations guaranteed under this Program may not exceed 25 years. No debt maturity may, however, exceed the economically useful life of the fishing vessel or fisheries shoreside facility involved. The economically useful life will be determined by the Chief, Financial Services Division, on a case-by-case basis.

(1) *Fishing vessels.* Generally, 25-year maturities for obligations on fishing vessels guaranteed under the Program will be restricted to financings for the construction of large and expensive fishing vessels with economically useful lives supporting a 25-year maturity. Debt maturities on guaran-

teed obligations for financing smaller and less expensive fishing vessels will generally be restricted to 15-20 years (or less, if their economically useful lives are less or if risk considerations require less).

(2) *Fisheries shoreside facilities.* Debt maturities on guaranteed obligations for financing major fisheries shoreside facilities construction Projects may generally be up to 25 years if the economically useful life of the facility is at least that long. If a major facility Project involves a significant amount of financing for fixed equipment which has a shorter economically useful life than that of the structure which houses it, an acceptable maturity date for the whole Project will be determined by a weighted average of the differing economically useful lives involved or by such other method as the Chief, Financial Services Division, deems appropriate (including separate financings if that is warranted). More minor facilities Projects will generally be restricted to debt maturities of 15-20 years (or less, if their economically useful lives are less or if risk considerations require less).

(3) *Reconstruction and reconditioning.* The debt maturity of guaranteed financing for reconstruction or reconditioning will not extend beyond the economically useful life of the vessel or facility in its reconditioned or reconstructed state. The economically useful life of a reconstructed or reconditioned vessel or facility will be determined by the Chief, Financial Services Division, on a case-by-case basis.

(d) *Interest rates.* Interest rates on obligations to be guaranteed under the Program shall be approved by the Program and shall not exceed the rate determined to be reasonable, taking into account the range of interest rates prevailing in the private market for similar transactions.

(e) *Refinancing.* Refinancings may be guaranteed if the financing which is being refinanced would itself have been eligible for a Program guarantee.

(f) *Foreclosure purchase.* The financing of the purchase price of a vessel or facility whose previous financing was guaranteed under the Program and which is then sold at a foreclosure sale (or sold subsequent to the foreclosure sale after the Program purchases the vessel or facility at foreclosure) may be guaranteed under the Program.

[47 FR 57435, Dec. 23, 1982, as amended at 51 FR 9214, Mar. 18, 1986]

§ 255.7 Fishing industry ability and experience.

(a) *Owner-operated projects.* Fishing vessel and fisheries shoreside facility owners must possess the necessary ability, experience, resources, character, reputation, and other qualifications to operate properly and maintain the vessel or facility and protect the Program against undue risk. Owners who cannot demonstrate a successful background of ability and experience *in the fishing industry* of an appropriate duration, degree, and nature considering the type and magnitude of the Project for which financing is being sought will not be eligible for a Program guarantee. Under appropriate circumstances, and at the Program's sole discretion, the lessee of a financing lease may be considered as an "owner" for the purposes of meeting the requirements of this section.

(b) *Equity contributors.* Equity contributors without this demonstrated fishing industry ability and experience may be allowed to own a portion, not to exceed 49 percent, of the vessel or facility for which guaranteed financing is sought only if:

(1) At least 51 percent of the vessel or facility is owned by persons who do possess the requisite fishing industry ability and experience, and such persons have made a full pro-rata equity contribution, are severally 100 percent liable for the debt obligation, and are responsible for the management and operation of the Project; and

(2) The vessel or facility being financed is so large and so expensive as to be beyond the normal equity funding capability of an owner with the requisite fishing industry ability and experience.

(c) *Limitation of liability.* In no event will equity contributors be permitted to limit their liability to the amount of their original equity contribution. Each equity contributor shall, additionally, be jointly and severally liable for *at least* the amount of the guaranteed debt obligation which corresponds to the percentage of such equity contributor's ownership interest in the vessel or facility. This limitation of liability provision shall apply to all equity contributors in closely-held corporations, partnerships, and joint ventures.

§ 255.8 Economic soundness.

(a) *Income and expense projections.* Conservative income and expense projections must reasonably assure adequate net earnings from operation of the vessel or facility. This projection must allow the prospective accumulation of net retained earnings sufficient to provide for operational contingencies, to establish a reasonable reserve for depreciation, and to protect the Project against cyclical economic conditions in the fishing industry.

(b) *Underutilized fisheries.* An economic soundness test for vessels or facilities to be operated in underutilized fisheries that is less stringent than the requirements for vessels or facilities to be operated in more developed fisheries may, at the Program's discretion, be applied. This less stringent economic soundness test will, however, not extend to factors beyond the uncertainty of cash-flow projections in an underutilized fishery. Moreover, the Program will otherwise only guarantee financing for vessels or facilities which are to operate in the *initial* development stages of an underutilized fishery if the owners of those vessels or facilities adequately share with the Program a higher degree than ordinary of the greater financial risk. Demonstrated fisheries ability and experience requirements, financial condition requirements, and collateral requirements all may be stringent when the vessel or facility financed is to operate in the *initial* development stages of an underutilized fishery rather than in a more developed fishery. Owners of vessels or facilities which are to operate in the *initial* development stages of an underutilized fishery must possess *exceptional* fisheries ability and experience.

(c) *Consultant services.* The Program may require, as a pre-condition to a decision about approving a guarantee, that expert consulting services be provided. This requirement will generally be restricted to situations where a guarantee is sought for financing for larger and more expensive vessels to be operated in underutilized fisheries, or for larger and more expensive fisheries shoreside facilities, but may also be imposed where a guarantee is sought for financing for larger and more expensive vessels to be operated in more developed fisheries. The expert consulting services may be required to assist in assessing economic, technical, and financial feasibility, property design and engineering or other factors. When such a requirement is imposed, the Program (under conditions acceptable to the Obligor) will choose the consultant and specify the consultant's duties, and the Obligor will reimburse the Program for the Program's payment of the consultant,s services. No approved application will be closed until satisfactory arrangements have been made for such reimbursement. If an application is declined, the 25 percent commitment fee may be used by the Program for such reimbursement. *When such a requirement is imposed by the Program,* the cost of such consulting services may be included in the actual cost of the Project (if approved) for purposes of determining the amount of the guarantee.

§ 255.9 Financial requirements.

(a) *Working capital.* The vessel or facility owner must be in sufficiently sound financial condition to meet obligations, to continue to operate successfully the vessel or facility and all other business operations, and to protect the Program against undue risk. Audited financial statements will ordinarily be required in applications for guaranteed financing for large fisheries shoreside facilities Projects, and may be required in applications for other purposes. Working capital (current assets minus current liabilities) requirements will be established on a case-by-case basis, but must in all cases be sufficient to fund vessel or facility operations until the vessel or facility can generate sufficient income to do so. Working capital must be sufficient not only for the Project for which guaranteed financing is sought, but for all other affiliated projects, businesses, or interests. The *minimum* working capital from *equity* sources must in the case of fishing vessel construction equal at least 8 percent of the total capitalizable cost of the vessel. In the case of fisheries shoreside facility construction, the minimum working capital required from equity sources will be determined on a case-by-case basis, but will ordinarily be considerably greater than that required for fishing vessels. Minimum working capital requirements for reconstruction, reconditioning, and (where eligible) purchasing Projects will be decided on a case-by-case basis. *Additional* working capital may be required on a case-by-case basis and may, at the Program's discretion, consist of readily convertible investments, other assets readily capable of being used to generate working capital, lines or letters of credit, or the presence of a co-maker or guarantor with sufficient financial resources.

(b) *Equity.* No financing shall be approved for a guarantee unless the Obligor can demonstrate that, at the time of the financing's closing, *minimum* capital provided from *equity* sources is equal to at least the total of the following:

(1) 12½ percent of the total capitalizable cost of the construction, reconstruction, reconditioning, or (where eligible) purchase of the vessel or facility (the downpayment);

(2) The Program's first-year guarantee fee;

(3) The first year's premium for all required insurance;

(4) The minimum working capital requirement; and

(5) Such other *additional* amounts as the Program may deem necessary on a case-by-case basis.

(c) *Guarantees of financing for fisheries shoreside facilities or processing vessels.* Applicants for guarantees for financing of fisheries shoreside facilities and processing vessels will be required to obtain acceptable lines or letters of credit (some may be required to be in the form of irrevocable letters of credit) for all foreseeable inventory financing needs (beyond those to be met by the working capital available from equity sources) during at least the first year of operation of the facility or vessel.

§ 255.10 Collateral.

(a) *Mortgages.* The Programs will require a primary pledge, not subordinate to any other party, of the property being financed by the Program guarantee, unless such a primary pledge is available on substitute collateral of equal or greater value. Secondary pledges will be allowed, at the Program's discretion, on supplementary collateral.

(b) *Guarantees.* If, in considering the risk involved in guaranteeing a financing, net worth is a significant factor relied on to offset other risks, such net worth must ordinarily be pledged as additional collateral for the program guarantee (an irrevocable letter of credit may be substituted under terms and conditions acceptable to the Program). If a closely-held corporation will be the Obligor, all major stockholders will ordinarily be required to provide their personal guarantees as additional collateral for the Program guarantee. If a subsidiary corporation, without substantial assets in addition to the vessel or facility is Obligor, the parent corporation will ordinarily be required to provide its guarantee as additional collateral for the Program guarantee. Personal or entity guarantees will always be required as additional collateral for Program guarantees where necessary to assure that the principal parties in interest, who ultimately stand most to benefit from the Project, are held accountable for the performance and operation of the Project.

(c) *Dual-use Capital Construction Fund agreement.* In the case of fishing vessels, the Program may require as additional collateral, execution of a dual-use Capital Construction Fund Program agreement, and annual deposit into such fund (on a tax-deferred basis) of a reasonable portion of the net income of the vessel. Dual-use agreements provide for all the normal benefits of the Capital Construction Fund Program, but also give the Program control of withdrawals from a

Capital Construction Fund and allow the Program to use these reserved funds, in the event of a default, to repay the debt obligation involved in the guaranteed financing. This control insures that the Obligor will have an emergency reserve of funds, as well as a reserve for reconditioning of the vessel. At the Program's discretion, reserved funds not required in connection with the vessel for which financing is guaranteed may be withdrawn for other qualified purposes.

(d) *Reconstruction or reconditioning.* The Chief, Financial Services Division, may, in his discretion, require such additional security or collateral as may be necessary to secure the Program's interest.

[47 FR 57435, Dec. 23, 1982, as amended at 51 FR 9214, Mar. 18, 1986]

§ 255.11 Miscellaneous requirements.

(a) *Insurance.* All vessels and facilities for which financing is guaranteed shall be continuously insured during the term of the Program guarantee with such casualty, liability, breach of warranty, keyman, title, and/or other insurance in such form and amounts as the Program deems necessary. The Program shall ordinarily be the sole loss payee on all such insurances. No such insurances may be cancelled without 20 days prior written notice to the Chief, Financial Services Division. The Program's standard endorsements regarding the insured's breach of warranties, negligence, omission, etc., as well as an admission of seaworthiness or property soundness, shall be a part of all such insurances.

(b) *Bids and project costs.* If application for Program guarantee is first made before a contract for the vessel or facility to be financed is executed, not less than three responsive bids for the vessel or facility will ordinarily be required. Ordinarily, the lowest bid will be accepted, unless the Obligor and the Program agree that it is advisable to accept a higher bid. If application for a Program guarantee is first made after a contract for the vessel or facility has been executed, the Program may not guarantee a financing in an amount higher than would fairly and reasonably have resulted if competitive bidding had occurred. All applicants are encouraged to obtain at least three competitive bids, and applicants without such bids who first apply after a contract has been executed may be required by the Program to establish, at their expense, independent confirmation acceptable to the Program that the contract cost is both fair and reasonable. Approvals and commitments for Program guarantees will be based on the initial contract cost, and contract cost overruns may or may not, at the sole discretion of the Program, be added to the amount of the guaranteed financing.

(c) *Property inspection.* The Program will require inspection and approval of all vessels and facilities before providing a financing guarantee. For all guarantees involving financings of more than $500,000, the Program, where appropriate, will require inspection and approval by certified architects or engineers (either marine or real property architects or engineers). For program guarantees for financing of less than $500,000, the required property inspection and approval may, at the Program's discretion, be made by any competent authority acceptable to the Program. The required property inspection and approval should involve assessment of at least the following:

(1) Adequacy of workmanship;

(2) Fitness and sufficiency for the intended purpose;

(3) Reasonableness of cost;

(4) Compliance with basic contract specifications regarding the property; and

(5) The identification and recommended resolution of any significant deficiencies.

Where financing for used vessels or facilities is to be guaranteed, the inspection and approval assessment will be adjusted to provide the normal assurances associated with financing the acquisition of used property. Issuance of guarantees of financings involving more than $5,000,000 may be conditioned upon additional requirements regarding the inspection and approval of a vessel or facility. Program guarantees of financings involving more than $5,000,000 should always be conditioned on comprehensive *on site* inspection, by certified architects and engineers, and inspection of the vessel or facility to be financed at appropriate times during construction, reconstruction, or reconditioning. The Program may require American Bureau of Shipping *classification* requirements for all Program guarantees involving fishing vessels costing more than $5,000,000, and applicants are urged presently to consider voluntary use of the American Bureau of Shipping *classification* program for the construction of all fishing vessels costing over $5,000,000. All required property inspections and approvals must be conducted by competent and impartial authorities acceptable to the Program. Architects, engineers, surveyors, or appraisers employed by contractors constructing, reconstructing, or reconditioning a vessel or facility, or by parties selling used vessels or facilities, are not acceptable for meeting this requirement. The cost of inspection and approval services in connection with a vessel or facility may be included in the actual cost of the vessel or facility and, thus, guaranteed by the Program.

(d) *Maintenance reviews.* All vessels and facilities for which financing is guaranteed under the Program shall be inspected at least once every three years by a competent and impartial authority acceptable to the Program. A full inspection report, identifying deficiencies and recommending the action necessary for their correction, will be provided to the Obligor and to the Program. Failure to provide this tri-annual inspection, or correct deficiencies identified by it, will constitute a default of the terms and conditions of mortgages securing the Program's guarantee and a cause, at the Program's discretion, for acceleration and liquidation of the debt obligation. Special property inspections may be required whenever the Program deems it necessary to preserve its collateral. All such inspections shall be at the expense of the Obligor. This requirement extends to all supplementary collateral for Program guarantees.

(e) *Terms and conditions of Program guarantees.* The Program will, on a case-by-case basis, specify in detail the precise terms and conditions prerequisite to the Program's willingness to provide a guarantee. These terms and conditions are at the Program's sole discretion, and an applicant's failure to comply with them will result in nonqualification for a Program guarantee.

(f) *Program Obligees.* The applicant may choose the Obligee to fund the debt to be guaranteed by the Program. Obligees may be any financial institution, public agency, or other party. The Program may, however, refuse to guarantee financing unless it has approved the terms and conditions of the financing (including particularly the interest rate and other amortization provisions) *before* the Obligor makes a firm commitment to an Obligee. Failure to first obtain the Program's approval may result in the Program's refusal to issue the guarantee despite the fact that the Obligor may have created a binding contract with an Obligee, abrogation of which may result in loss to the Obligor. The Program will assist those whose applications for Program guarantees are approved to gain access to the private market for appropriate financing, but only as a gratuitous service. Arrangements between the Obligor and the Obligee are a matter of private contract between those two parties, and the Program will not in any way be responsible to either for nonperformance by the other.

(g) *Closing*—(1) *Contracts.* All debt obligations and associated contractual arrangments which comprise the financing will be documented by *standard Program forms,* which may not be altered or amended in any way by insertion, deletion, or variation without prior Program approval (which will be sparingly granted).

(2) *Closing schedules.* The Program will attempt to meet the closing schedules (where reasonable) of Obligors and Obligees. The Program, however, accepts no responsibility for adverse interest-rate fluctuations, loss of commitments, or other consequences of non-compliance with Obligors' or Obligees' closing schedules. Obligors and Obligees should work closely with the Program to assure reasonable closing schedules, since internal workload and personnel considerations sometimes

affect the Program's ability to meet otherwise desirable schedules.

(3) *Closing vessel financings.* The Program will attempt to close guarantees on financings involving fishing vessels with minimal services from private attorneys and/or other private contractors.

(4) *Closing shoreside facilities financings.* Closings for guarantees of financing for fisheries shoreside facilities will require substantial services from private attorneys and/or other contractors at the expense of the Obligor. The choice of such private contractors for any portion of the closing process is subject to Program approval. Services required to be provided by private contractors may include: title searches; preparation of legal documents; actual closing, escrow, and disbursement services; and the provision of a *legal opinion* from acceptable counsel regarding the validity and binding effect of transactions, compliance with procedures specified by the Program, and other assurances.

(5) *Paying agents.* The Chief, Financial Services Division, in his discretion, may require the use of a paying agent or trustee. Where paying agents are used, Obligors or Obligees will be responsible for their cost.

§ 255.12 Fees.

(a) *Filing and commitment fees.* The Program's filing and commitment fee will be ½ of 1 percent of the principal amount of the Program guarantee for which application is made. The fee is due at the time an application is submitted, and no application for guarantee will be accepted unless the full filing and commitment fee accompanies it. The filing fee is 50 percent of the filing and commitment fee, and once an application for a guarantee is accepted, no portion of the filing fee will be returned for any reason. The commitment fee is the remaining 50 percent of the filing and commitment fee, and is returnable only if a refund is requested before the Program issues an Approval in Principle letter or if the application is declined.

(b) *Guarantee fee.* The Agency guarantee fee is 1 percent of the average unpaid principal balance of the debt obligation for which the guarantee is outstanding during each year of the life of the guarantee. The guarantee fee is due in advance based upon the debt obligation's amortization schedule. The first annual guarantee fee is due at closing of the guarantee. Each subsequent annual guarantee fee is due on the anniversary date of the closing of the guarantee. No refund of guarantee fees will be made regardless of the status of the financing or the guarantee during the year to which the guarantee fee relates.

(c) *Refinancing/assumption fee.* The Program's refinancing/assumption fee for financings already guaranteed under the Program (other refinancing applicants will be charged fees under paragraph (a) of this section) is ¼ of 1 percent of the principal amount of the debt obligation to be refinanced or assumed, and is due upon application for a guarantee for refinancing/assumption. The refinancing/assumption fee is nonreturnable regardless of the subsequent disposition of an application. The Chief, Financial Services Division, may however:

(1) Waive the refinancing/assumption fee where the refinancing/assumption is primarily to protect the Program's interest, or

(2) Charge an actual cost fee, where the refinancing/assumption does not substitute a wholly different obligor for the initial obligor.

(d) *Where payable.* Fees should be paid by check made payable, and mailed, to: "NMFS/FSFF", U.S. Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 73004, Chicago, Ill. 60673.

[51 FR 9214, Mar. 18, 1986]

§ 255.13 Demands and payment.

All demands by Obligees, whose debt has been guaranteed under the provisions of this Program, for payment of all or any portion of a guaranteed obligation in default shall be made in writing to the Chief, Financial Services Division, F/UD5, 3300 Whitehaven St., NW., Washington, DC 20235, by certified mail, return receipt requested. In the event the Program does not acknowledge timely receipt of a demand alleged to have been timely made, the demander must possess evidence of the demand's timely delivery to the Program. Payment of demands shall be made within 30 days after receipt of a timely demand by the Chief, Financial Services Division. Demands may be made by Obligees' duly authorized agents or trustees.

§ 255.14 Default/liquidation of collateral.

(a) *Default.* In the event of default by an Obligor which results in the payment by the Program to an Obligee of the guaranteed debt, the Program shall ordinarily foreclose on its collateral and institute personal collection proceedings against the Obligor and the guarantors of the financing. At the Program's sole discretion, other remedies which are deemed most appropriate to protect the Program's interest may be pursued.

(b) *Liquidation of collateral.* If the Program is the highest bidder at a foreclosure sale of collateral, the Program (as the new owner of the collateral) may, in its sole discretion, subsequently complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, lease, or sell such collateral. In the event there is a willing buyer for such collateral at an amount at least equal, or almost equal, to the amount owed the Program, the Program may convey title to such collateral, upon proper payment, without competitive bidding or other contracting procedures. If there is not a willing buyer for such collateral at an amount equal, or almost equal, to the amount owed the Program, the collateral will ordinarily be disposed of by competitive bidding—unless the Program decides that it can best recover without competitive bidding. Any deficiency resulting from the Program's purchase of collateral at a foreclosure sale shall not be offset by receipts from a subsequent sale of such collateral in the event the Program purchases the collateral and sells it for an amount greater than that owed the Program; the original Obligors and guarantors of the guaranteed financing remain liable for such deficiency.

§ 255.15 Program guidelines.

The Chief, Financial Services Division, will issue Program guidelines from time to time, as the need arises, to govern national Program policy and administrative issues which are not addressed by these rules.

§ 255.16 Applicability of rules.

These rules will be applicable to all Program applications first accepted after the rules' effective date.

PART 259—CAPITAL CONSTRUCTION FUND

JOINT TAX REGULATIONS

Sec.
259.1 Execution of agreements and deposits made in a Capital Construction Fund

CAPITAL CONSTRUCTION FUND AGREEMENT

259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").
259.31 Acquisition, construction, or reconstruction.
259.32 Conditional fisheries.
259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.
259.34 Minimum and maximum deposits; maximum time to deposit.
259.35 Annual deposit and withdrawal reports required.
259.36 CCF accounts.
259.37 Conditional consents to withdrawal qualification.
259.38 Miscellaneous.

AUTHORITY: 46 U.S.C. 1177.

JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where: (1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and (2) for taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.

(c)(1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.[1]

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

Capital Construction Fund Agreement

Source: Sections 259.30 to 259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

(a) *General qualifications.* To be eligible to enter into an Interim CCF Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined in sec. 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(3) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. Dual documentation in

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[1] The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR Part 176) by the U.S. Coast Guard as qualified to carry more than six passengers or demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant's actual intentions. Vague or contingent objectives will not be acceptable.

(b) *Content of application.* Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each "eligible vessel" which is to be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Official number, or, in the case of vessels under 5 net tons, the State registration number where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which vessel is documented and date last documented,

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common names—of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) If a fishing vessel, the area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources).

(4) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Interim CCF Agreement) including:

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidences of the indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF under an Interim CCF Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

(vii) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) *Filing.* The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service's Financial

Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

(Approved by the Office of Management and Budget under control number 0648-0090)

[39 FR 33675, Sept. 19, 1974, as amended at 42 FR 65185, Dec. 30, 1978; 48 FR 57302, Dec. 29, 1983]

§ 259.31 Acquisition, construction, or reconstruction.

(a) *Acquisition.* No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) *Reconstruction.* No reconstruction project costing less than $100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the $100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the $100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as

a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

(d) *Energy saving improvements.* An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32 and from all qualifying tests for reconstruction set forth in paragraph (b) of this section with the following exceptions:

(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(Sec. 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177))

[39 FR 33675, Sept. 19, 1974, as amended at 46 FR 54563, Nov. 3, 1981]

§ 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is Part 251 of this chapter. Each fishery so restricted is termed a "conditional fishery". Subpart A of Part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of Part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (Part 251 of this chapter should be referred to for details). The purpose of this § 259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel "Y") for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the "Y" vessel to be constructed causes (within 1 year after the delivery of vessel "Y") to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel "Z") which has during the previous 18 months operated substantially in the same fishery as the "Y" vessel and which has a fishing capacity substantially equivalent to the "Y" vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for the Secretary's discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel "Z" was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel "Z" entered it), (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel "Y" was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel "Z" and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a "Z" vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a "Y" vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had,

immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-ration shall be according to the number of months or any part thereof in a party's tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party's tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party's tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary's consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary's consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary's consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no forseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this § 259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this § 259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.

(a) *Periods controlling permissibility.* For the purpose of this § 259.33, the period between the beginning and the end of a party's tax year is designated "Period (aa)"; the period between the end of a party's tax year and the party's tax due date for that tax year is designated "Period (bb)"; the period between the party's tax due date and the date on which ends the party's last extension (if any) of that tax due date is designated "Period (cc)".

(b) *Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date).* Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: *Provided*, The applicant's application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary's execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary willl nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant's having failed to apply in a more timely fashion.

(c) *Constructive deposits (after Interim CCF Agreement effectiveness date).* The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) *Ratification of withdrawals (as-qualified) made without first having obtained Secretary's consent.* The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary's consent therefor, provided the withdrawal was such as would have resulted in the Secretary's consent had it been requested before withdrawal, and provided further that the party's request for consent (together with sufficient supporting data to enable issuance of the Secretary's consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary's consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's

consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one to which the Secretary will not or cannot consent by ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a nonqualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) *First tax year for which Interim CCF Agreement is effective.* An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) *Minimum annual deposit.* The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more than 3 taxable years in advance of the taxable year in which the agreement is effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit re-

quirement in past or future years: *Provided, however,* At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the 50 percent of taxable income situation applies).

(2) The Secretary may, at his discretion and for good and sufficient cause shown, consent to minimum annual deposits in any given tax year or combination of tax years in an amount lower than prescribed herein: *Provided,* The party demonstrates to the Secretary's satisfaction the availability of sufficient funds from any combination of sources to accomplish Schedule B objectives at the time they are scheduled for accomplishment.

(b) *Maximum deposits.* Other than the maximum annual ceilings established by the Act, the Secretary shall not establish a maximum annual ceiling: *Provided, however,* That deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives, unless the Interim CCF Agreement is then amended to establish additional Schedule B objectives.

(c) *Maximum time to deposit.* Ten years shall ordinarily be the maximum time the Secretary shall permit in which to accumulate deposits prior to commencement of any given Schedule B objective. A time longer than 10 years, either by original scheduling or by subsequent extension through amendment, may, however, be permitted at the Secretary's discretion and for good and sufficient cause shown.

§ 259.35 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit and withdrawal reports. Failure to submit such reports may be cause for involuntary termination of CCF Agreements.

(1) A preliminary deposit and withdrawal report at the end of each calendar year, which must be submitted not later than 45 days after the close of the calendar year. The report must give the amounts withdrawn from and deposited into the party's CCF during the subject year, and be in letter form showing the agreement holder's name, FVCCF identification number, and taxpayer identification number. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party's tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.

(2) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, with extensions (if any), for filing the party's Federal income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

(Approved by the Office of Management and Budget under control number 0648-0041)

[39 FR 33675, Sept. 19, 1974, as amended at 48 FR 57302, Dec. 29, 1983; 53 FR 35203, Sept. 12, 1988]

§ 259.36 CCF accounts.

(a) *General:* Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by § 259.35. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent and then only under such conditions as the Secretary, in his discretion, prescribes.

(b) *Assignment:* The use of Fund assets for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories:* (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may specify.

(2) Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

(3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:

(i) The trustee should be specified in the Agreement;

(ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;

(iii) The trust instrument should provide that the trustee will give consideration to the party's withdrawal requirements under the Agreement when investing the Fund;

(iv) The trustee must agree to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the Fund.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary's discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:

(1) The vessel age limitations imposed by § 259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by § 259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§ 259.30 through 259.38 are adopted.

(e) These §§ 259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

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AUTHORITY: Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

SOURCE: 31 FR 16052, Dec. 15, 1966, unless otherwise noted.

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

§ 260.1 Administration of regulations.

The Secretary of Commerce is charged with the administration of the regulations in this part except that he may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service of the Department in his discretion.[1]

[36 FR 21037, Nov. 3, 1971]

DEFINITIONS

§ 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

Acceptance number. "Acceptance number" means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.

Act. "Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621 et seq.).

Applicant. "Applicant" means any interested party who requests inspection service under the regulations in this part.

Case. "Case" means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

Certificate of loading. "Certificate of loading" means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

Certificate of sampling. "Certificate of sampling" means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

Class. "Class" means a grade or rank of quality.

Condition. "Condition" means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to those factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

Department. "Department" means the U.S. Department of Commerce.

Deviant. "Deviant" means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

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[1] All functions of the Department of Agriculture which pertain to fish, shellfish, and any products thereof, now performed under the authority of Title II of the Act of August 14, 1946, popularly known as the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) including but not limited to the development and promulgation of grade standards, the inspection and certification, and improvement of transportation facilities and rates for fish and shellfish and any products thereof, were transferred to the Department of the Interior by the Director of the Budget (23 FR 2304) pursuant to section 6(a) of the Act of Aug. 8, 1956, popularly known as the Fish and Wildlife Act of 1956 (16 U.S.C. 742e). Reorganization Plan No. 4 of 1970 (84 Stat. 2090) transferred, among other things, such functions from the U.S. Department of the Interior to the U.S. Department of Commerce.

Deviation. "Deviation" means any specifically defined variation from a particular requirement.

Director. "Director" means the Director of the National Marine Fisheries Service.

Establishment. "Establishment" means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

Inspection certificate. "Inspection certificate" means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

Inspection service. "Inspection service" means:

(1) The sampling pursuant to the regulations in this part;

(2) The determination pursuant to the regulations in this part of:

(i) Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;

(ii) The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples;

(3) The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or

(4) Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

Inspector. "Inspector" means any employee of the Department authorized by the Secretary or any other person licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party. "Interested party" means any person who has a financial interest in the commodity involved.

Licensed sampler. "Licensed sampler" means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

Lot. "Lot" has the following meanings:

(1) For the purpose of charging fees and issuing certificates, "Lot" means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: *Provided,* That:

(i) Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;

(ii) Containers in a pile bearing an identification mark different from other containers of such processed product in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and

(iii) If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.

(2) For the purpose of sampling and determining the grade or compliance with a specification, "Lot" means each pile of containers of the same size and

type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that pile may be deemed to be a separate lot.

Official establishment. "Official establishment" means any establishment which has been approved by National Marine Fisheries Service, and utilizes inspection service on a contract basis.

Officially drawn sample. "Officially-drawn sample" means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Secretary pursuant to the regulations in this part.

Person. "Person" means any individual, partnership, association, business trust, corporation, any organized group of persons (whether incorporated or not), the United States (including, but not limited to, any corporate agencies thereof), any State, county, or municipal government, any common carrier, and any authorized agent of any of the foregoing.

Plant. "Plant" means the premises, buildings, structures, and equipment (including, but not being limited to, machines, utensils, and fixtures) employed or used with respect to the manufacture or production of processed products.

Processed product. "Processed product" means any fishery product or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

Quality. "Quality" means the inherent properties of any processed product which determine the relative degree of excellence of such product, and includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

Rejection number. "Rejection number" means the number in a sampling plan that indicates the minimum number of deviants in a sample that will cause a lot to fail a specific requirement.

Sample. "Sample" means any number of sample units to be used for inspection.

Sample unit. "Sample unit" means a container and/or its entire contents, a portion of the contents of a container or other unit of commodity, or a composite mixture of a product to be used for inspection.

Sampling. "Sampling" means the act of selecting samples of processed products for the purpose of inspection under the regulations in this part.

Secretary. "Secretary" means the Secretary of the Department or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary in respect to the matters covered by the regulations in this part.

Shipping container. "Shipping container" means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing unpackaged processed products for shipping.

Unofficially drawn sample. "Unofficially drawn sample" means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Director pursuant to the regulations in this part.

Wholesome. "Wholesome" means the minimum basis of acceptability for human food purposes, of any fish or fishery product as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 21037, Nov. 3, 1971]

§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

Official certificate. "Official certificate" means any form of certification, either written or printed, including those defined in § 260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

Official device. "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Official identification. "Official identification" means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

Official mark. "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in § 260.86, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

Official memorandum. "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

INSPECTION SERVICE

§ 260.12 Where inspection service is offered.

Inspection service may be furnished wherever an inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service.

§ 260.13 Who may obtain inspection service.

An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

§ 260.14 How to make application.

An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

§ 260.15 Information required in connection with application.

Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.

§ 260.16 Filing of application.

An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 260.17 Record of filing time.

A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

§ 260.18 When application may be rejected.

An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

§ 260.19 When application may be withdrawn.

An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: *Provided*, That, the applicant shall pay at the hourly rate prescribed in § 260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.20 Disposition of inspected sample.

Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

§ 260.21 Basis of inspection and grade or compliance determination.

(a) Inspection service shall be performed on the basis of the appropriate U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: *Provided*, That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: *Provided further*, That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade; and

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in § 260.61. A "deviant," as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeedingly lower grades until the grade of the lot, if assignable, is established.

§ 260.22 Order of inspection service.

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 260.23 Postponing inspection service.

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

§ 260.24 Financial interest of inspector.

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

§ 260.25 Forms of certificates.

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

§ 260.26 Issuance of certificates.

(a) An inspection certificate may be issued only by an inspector: *Provided,* That, another employee of the inspection service may sign any such certificate covering any processed product inspected by an inspector when given power of attorney by such inspector and authorized by the Secretary, to affix the inspector's signature to an inspection certificate which has been prepared in accordance with the facts set forth in the notes, made by the inspector, in connection with the inspection.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: *Provided,* That, another employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector's or licensed sampler's signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

§ 260.27 Issuance of corrected certificates.

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: *Provided,* That, the issuance of such report is approved by the Secretary.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall be filed in such manner as the Secretary may designate. Additional copies of any such certificates may be supplied to any interested party as provided in § 260.78.

§ 260.30 Report of inspection results prior to issuance of formal report.

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

APPEAL INSPECTION

§ 260.36 When appeal inspection may be requested.

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

§ 260.37 Where to file for an appeal inspection and information required.

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 260.38 When an application for an appeal inspection may be withdrawn.

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: *Provided,* That the applicant shall pay at the hourly rate prescribed in § 260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.39 When appeal inspection may be refused.

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 260.40 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: *Provided*, That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when another inspector or licensed sampler is not available in the area where the product is located.

§ 260.41 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

LICENSING OF SAMPLERS AND INSPECTORS

§ 260.47 Who may become licensed sampler.

Any person deemed to have the necessary qualifications may be licensed as a licensed sampler to draw samples for the purpose of inspection under the regulations in this part. Such a license shall bear the printed signature of the Secretary, and shall be countersigned by an authorized employee of the Department. Licensed samplers shall have no authority to inspect processed products under the regulations in this part except as to identification and condition of the containers in a lot. A licensed sampler shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.48 Application to become a licensed sampler.

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:

(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;

(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;

(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and

(d) Such other information as may be requested.

§ 260.49 Inspectors.

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

§ 260.51 Surrender of license.

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

SAMPLING

§ 260.57 How samples are drawn by inspectors or licensed samplers.

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

§ 260.58 Accessibility for sampling.

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

§ 260.59 How officially drawn samples are to be identified.

Officially drawn samples shall be marked by the inspector or licensed sampler so such samples can be properly identified for inspection.

§ 260.60 How samples are to be shipped.

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed prodcuts from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.

§ 260.61 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: *Provided*, That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement; or

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.

(d) If in the conduct of any type of in-plant inspection the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word "deviation" for the word "deviant" wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.

SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS

TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

[See footnotes at end table.]

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of less volume than that of a No. 300 size can (300 × 407)	3,600 or less	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	Over 420,000
GROUP 2 Any type of container of a volume equal to or exceeding that of a No. 300 size can, but not exceeding that of a No. 3 cylinder size can (404 × 700)	2,400 or less	2,401-12,000	12,001-24,000	24,001-48,000	48,001-72,000	72,001-108,000	108,001-168,000	168,001-240,000	Over 240,000
GROUP 3 Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can (603 × 812)	1,200 or less	1,201-7,200	7,201-15,000	15,001-24,000	24,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000

GROUP 4 Any type of container of a volume exceeding that of a No. 12 size can, but not exceeding that of a 5-gallon container	200 or less	201–800	801–1,600	1,601–2,400	2,401–3,600	3,601–8,000	8,001–16,000	16,001–28,000	Over 28,000
GROUP 5 Any type of container of a volume exceeding that of a 5-gallon container	25 or less	26–80	81–200	201–400	401–800	801–1,200	1,201–2,000	2,001–3,200	Over 3,200
Single sampling plans[1]									
Sample size (number of sample units)[2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	

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[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

[See footnotes at end of table.]

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	2,400 or less	2,401-12,000	12,001-24,000	24,001-48,000	48,001-72,000	72,001-108,000	108,001-168,000	168,001-240,000	Over 240,000
GROUP 2 Any type of container over 1 pound but not over 4 pounds net weight	1,800 or less	1,801-8,400	8,401-18,000	18,001-36,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000
GROUP 3 Any type of container over 4 pounds but not over 10 pounds net weight	900 or less	901-3,600	3,601-10,800	10,801-18,000	18,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000
GROUP 4 Any type of container over 10 pounds but not over 100 pounds net weight	200 or less	201-800	801-1,600	1,601-2,400	2,401-3,600	3,601-8,000	8,001-16,000	16,001-28,000	Over 28,000
GROUP 5 Any type of container over 100 pounds net weight	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
	Single sampling plans[1]								
Sample size (number of sample units)[2]	3	6	13	21	29	38	48	60	72

Acceptance number	0	1	2	3	4	5	6	7	8

[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows. Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE

[See footnotes at end of table.]

Container size group [1]	Lot size (number of containers)								
GROUP 1 Any type of container of 12 ounces or less	5,400 or less	5,401-21,600	21,601-62,400	62,401-112,000	112,001-174,000	174,001-240,000	240,001-360,000	360,001-480,000	Over 480,000
GROUP 2 Any type of container over 12 ounces but not over 60 ounces	3,600 or less	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	Over 420,000
GROUP 3 Any type of container over 60 ounces but not over 160 ounces	1,800 or less	1,801-8,400	8,401-18,000	18,001-60,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000
GROUP 4 Any type of container over 160 ounces but not over 10 gallons or 100 pounds whichever is applicable	200 or less	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	Over 32,000

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE—Continued

[See footnotes at end of table.]

Container size group [1]	Lot size (number of containers)								
GROUP 5 Any type of container over 10 gallons or 100 pounds whichever is applicable	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
	Single sampling plans [2]								
Sample size (number of sample units) [3]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

[1] Ounces pertain to either fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.

[2] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[3] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

[See footnotes at end of table.]

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	1,800 or less	1,801-8,400	8,401-18,000	18,001-36,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000

GROUP 2									
Any type of container over 1 pound but not over 6 pounds net weight	900 or less	901-3,600	3,601-10,800	10,801-18,000	18,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000
GROUP 3									
Any type of container over 6 pounds but not over 20 pounds net weight	200 or less	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	Over 32,000
GROUP 4									
Any type of container over 20 pounds but not over 100 pounds net weight	48 or less	49-400	401-1,200	1,201-2,000	2,001-2,800	2,801-6,000	6,001-9,600	9,601-15,000	Over 15,000
GROUP 5									
Any type of container over 100 pounds net weight	16 or less	17-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
Single sampling plans[1]									
Sample size (number of sample units)[2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

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[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section, for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

TABLE V—SINGLE SAMPLING PLANS FOR USE IN INCREASING SAMPLE SIZE BEYOND 72 SAMPLE UNITS

Sample size, n	84	96	108	120	132	144	156	168	180	192	204	216	230	244	258	272	286	300	314	328	342	356	370	384	400

TABLE V—SINGLE SAMPLING PLANS FOR USE IN INCREASING SAMPLE SIZE BEYOND 72 SAMPLE UNITS—Continued

Acceptance numbers, c...	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33

MULTIPLE SAMPLING PLANS [1]

TABLE VI—MULTIPLE SAMPLING PLANS COMPARABLE TO THE INDICATED SINGLE SAMPLING PLANS

[See footnotes at end of table.]

Indicated single sampling plan Single sample size, n	6			13			21			29			38			48			60			72		
Acceptance numbers, c	1			2			3			4			5			6			7			8		
Cumulative sample sizes, n_c, and acceptance numbers, c, and rejection numbers, r, for multiple sampling.	n_c	c	r	n_c	c	r	n_c	c	r	n_c	c	r	n_c	c	r	n_c	c	r	n_c	c	r	n_c	c	r
	4	0	2	8	0	3	10	0	3	12	0	4	14	0	4	16	0	4	18	0	5	22	0	5
	6	0	2	10	0	3	14	1	4	16	0	4	20	0	5	24	1	5	28	1	6	32	1	7
	8	1	2	12	1	3	18	1	4	20	1	5	26	1	6	32	2	6	38	2	7	42	2	8
				14	2	3	22	2	5	24	2	5	32	2	6	40	3	8	48	3	8	52	3	9
							26	4	5	28	3	6	38	3	7	48	4	8	58	4	8	62	5	10
										32	3	6	44	6	7	56	7	8	68	8	9	72	6	10
										36	5	6										82	9	10

§ 260.62 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

§ 260.63 Identification of lots sampled.

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do not otherwise possess suitable identification.

Fees and Charges

§ 260.69 Payment fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, or a surety bond suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21038, Nov. 3, 1971]

§ 260.70 Schedule of fees.

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, will be published as a notice in the FEDERAL REGISTER and will be in accordance with § 260.81.

(b) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered.

(1) The TYPE I (Contract Inspection) hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(2) The TYPE II (Lot Inspection) hourly fee is determined by adding a factor of 50 percent to the TYPE I fee, to cover additional costs (down-time, etc.) associated with conducting lot inspection services.

(3) The TYPE III (Miscellaneous and Consulting) hourly fee is determined by adding a factor of 25 percent to the TYPE I fee, to cover the additional costs (down-time, etc.) associated with conducting miscellaneous inspection services.

[48 FR 24901, June 3, 1983]

§ 260.71 Fee for inauguration of inspection service on a contract basis.

Prior to inauguration of inspection service, a fee of $25.00 per contract hour of inspection service will be charged and collected following completion of the final establishment survey and approval of it as an official establishment. The number of hours to which the fee for inauguration applies is the minimum number of manhours of inspection per week determined in accordance with § 260.97(a).

[41 FR 2395, Jan. 16, 1976; 41 FR 25015, June 22, 1976]

§ 260.72 Fees for inspection service performed under cooperative agreement.

The fees to be charged and collected for any inspection or similar service performed under cooperative agreement shall be those provided for by such agreement.

§ 260.73 Disposition of fees for inspections made under cooperative agreement.

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with § 260.69.

§ 260.74 Fee for appeal inspection.

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: *Provided*, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

§ 260.76 [Reserved]

§ 260.77 Fees for score sheets.

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be changed at the rate of $2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

§ 260.78 Fees for additional copies of inspection certificates.

Additional copies of any inspection certificate other than those provided for in § 260.29, may be supplied to any interested party upon payment of a fee of $2.75 for each set of five (5) or fewer copies.

§ 260.79 Travel and other expenses.

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: *Provided*, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: *And provided further*, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

§ 260.80 Charges for inspection service on a contract basis.

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

§ 260.81 Readjustment and increase in hourly rates of fees.

(a) When Federal Pay Act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: *Provided*, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[35 FR 15925, Oct. 9, 1970]

MISCELLANEOUS

§ 260.86 Approved identification.

(a) *Grade marks:* The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such grade, quality or classification.

The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

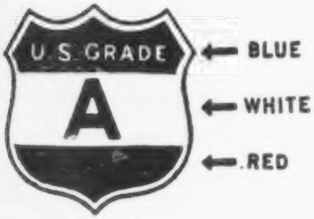

FIGURE 1.

Shield with plain background.

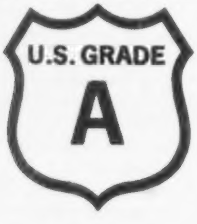

FIGURE 2.

U.S. GRADE A

FIGURE 3.

U.S.
GRADE
B

FIGURE 4.

U.S.
GRADE
C

FIGURE 5.

(b) *Inspection marks:* The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such quality or grade classification as may be approved by the Secretary.

The inspection marks approved for use shall be similar in form and design to the examples in Figures 6, 7, and 8 of this section.

Statement enclosed within a circle.

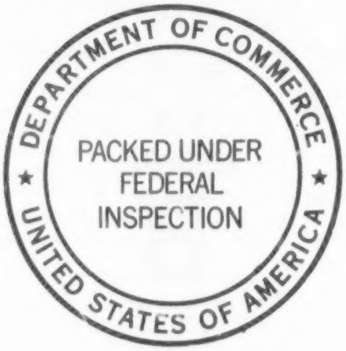
DEPARTMENT OF COMMERCE
PACKED UNDER
FEDERAL
INSPECTION
UNITED STATES OF AMERICA

FIGURE 6.

Statement without the use of the circle.

PACKED UNDER
FEDERAL
INSPECTION

U.S. DEPARTMENT
OF COMMERCE

FIGURE 7.

Statement without the use of the circle.

PACKED BY

UNDER FEDERAL INSPECTION
U.S. DEPT. OF COMMERCE

FIGURE 8.

(c) *Combined grade and inspection marks:* The grade marks set forth in paragraph (a) of this section, and the inspection marks, Figures 7 and 8, set forth in paragraph (b) of this section, may be combined into a consolidated grade and inspection mark for use on processed products that have been packed under inspection as provided in this part.

(d) *Products not eligible for approved identification:* Processed products which have not been packed under inspection as provided in this part shall not be identified by approved grade or inspection marks, but such products may be inspected on a lot inspection basis as provided in this part and identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) as appropriate, with marks similar in form and design to the examples in Figures 9 and 10 of this section.

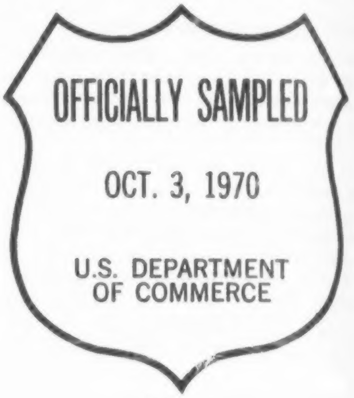
OFFICIALLY SAMPLED
OCT. 3, 1970
U.S. DEPARTMENT
OF COMMERCE

FIGURE 9.

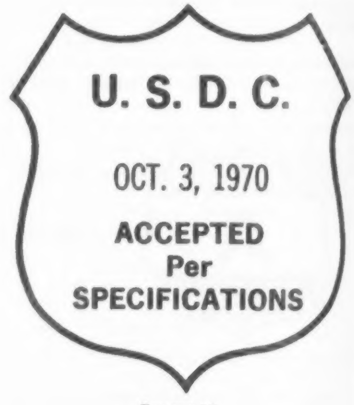
U. S. D. C.
OCT. 3, 1970
ACCEPTED
Per
SPECIFICATIONS

FIGURE 10.

(e) *Removal of labels bearing inspection marks:* At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

(1) The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a "rejected by

USDC Inspector" stamp provided by the Department.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

(3) Clearance for the release of the relabeled products shall be obtained by the processor from the inspector.

(f) Users of inspection services having an inventory of labels which bear official approved identification marks stating "U.S. Department of the Interior" or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]

§ 260.88 Political activity.

All inspectors and licensed samplers are forbidden, during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, are prohibited. This applies to all appointees or licensees, including, but not limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 260.90 Compliance with other laws.

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

§ 260.91 Identification.

Each inspector and licensed sampler shall have in his possession at all times and present upon request, while on duty, the means of identification furnished by the Department to such person.

§ 260.93 Debarment and suspension.

(a) *Debarment.* Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more plants under his control, if such person engages in one or more of the following acts or activities:

(1) Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

(2) Using on a processed product any label which displays any official identification, official device, or official mark, when the label is not currently approved for use by the Director or his delegate.

(3) Using on a processed product any label which displays the words "Packed Under Federal Inspection, U.S. Department of Commerce", or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms "United States", "Officially graded", "Officially inspected", "Government inspected", "Federally inspected", "Officially sampled", or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) *Temporary suspension.* (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five (5) days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with paragraph (b)(1), *Decisions* of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) *Hearing Examiner.* All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) *Hearing.* If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) *Notice of hearing.* The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Director: *Provided, however,* The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) *Right to counsel.* In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in Title 43, Code of Federal Regulations, Part 1.

(h) *Form, execution, and service of documents.* (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed Documents filed shall be executed by:

(i) The person or persons filing same, (ii) by an authorized officer thereof if it be a corporation or, (iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at ——— this ——— day of ———, 19—

Signature —————

(i) *Procedures and evidence.* (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of

the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) *Duties of Hearing Examiner.* The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.

(2) Regulate the course of the hearings.

(3) Prescribe the order in which evidence shall be presented.

(4) Dispose of procedural requests or similar matters.

(5) Hear and initially rule upon all motions and petitions before him.

(6) Administer oaths and affirmations.

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.

(12) Do all other things necessary for an orderly and impartial hearing.

(k) *The record.* (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

(l) *Decisions.* (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred, and the plants to which the debarment shall apply.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

Requirements for Plants Operating Under Continuous Inspection on a Contract Basis [1]

§ 260.96 Application for Fishery Products Inspection Service on a contract basis at official establishments.

Any person desiring to process and pack products in an establishment under fishery products inspection service on a contract basis, must receive approval of such buildings and facilities as an official establishment prior to the inauguration of such service. An application for inspection service to be rendered in an establishment shall be approved according to the following procedure:

(a) Initial survey: When application has been filed for inspection service as aforesaid, NMFS inspector(s) shall examine the buildings, premises, and facilities according to the requirements of the fishery products inspection service and shall specify any additional facilities required for the service.

(b) Final survey and establishment approval: Prior to the inauguration of the fishery products inspection service, a final survey of the buildings, premises, and facilities shall be made to verify that the buildings are constructed and facilities are in accordance with the approved drawings and the regulations in this part.

(c) Drawings and specifications of new construction or proposed alterations of existing official establishments shall be furnished to the Director in advance of actual construction for prior approval with regard to compliance with requirements for facilities.

[36 FR 21039, Nov. 3, 1971]

§ 260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw materials for processing as may be necessary to conform to the sanitary requirements precribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to

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[1] Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jursidiction over such establishments and operations.

any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: *Provided*, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s);

(11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official correspondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under Federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;

(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and

official establishment(s) under applicant's control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) By mutual consent; (ii) by either party giving the other party sixty (60) days' written notice specifying the date of suspension or termination; (iii) by one (1) day's written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part, (iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand or in possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]

§ 260.98 Premises.

The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(a) Strong offensive odors;

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a source of contamination in areas where food is exposed;

(d) Inadequately drained areas that may contribute contamination to food products through seepage or footborne filth and by providing a breeding place for insects or micro-organisms;

If the grounds of an official establishment are bordered by grounds not under the official establishment operator's control of the kind described in paragraphs (b) through (d) of this sec-

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tion, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

[36 FR 21040, Nov. 3, 1971]

§ 260.99 Buildings and structures.

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:

(a) *Lighting.* There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient nonglaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(b) *Ventilation.* There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.

(c) *Drains and gutters.* All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.

(d) *Water supply.* There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.

(e) *Construction.* Roofs shall be weathertight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(f) *Processing rooms.* Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.

(g) *Prevention of animals and insects in official establishment(s).* Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breading, and fishery products) are handled and stored. Screens, or other devices, adequate to prevent the passage of insects shall, where practical, be provided for all outside doors and openings. The use of chemical compounds such as cleaning agents, insecticides, bactericides, or rodent poisons shall not be permitted except under such precautions and restrictions as will prevent any possibility of their contamination of the processed product. The use of such compounds shall be limited to those circumstances and conditions as approved by NMFS.

(h) *Inspector's office.* Furnished suitable and adequate office space, including, but not being limited to, light, heat, and janitor service shall be provided rent free in official establishments for use for official purposes by the inspector and NMFS representatives. The room or rooms designated for this purpose shall meet with the approval of NMFS and shall be conveniently located, properly ventilated, and provided with lockers or cabinets suitable for the protection and storage of inspection equipment and supplies and with facilities suitable for inspectors to change clothing.

(i) Adequate parking space, conveniently located, for private or official vehicles used in connection with providing inspection services shall be provided.

[36 FR 21040, Nov. 3, 1971]

§ 260.100 Facilities.

Each official establishment shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(a) Containers approved for use as containers for processed products shall not be used for any other purpose.

(b) No product or material not intended for human food or which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any fishery product is manufactured, processed, handled, or stored.

(c) Suitable facilities for cleaning and sanitizing equipment (e.g., brooms, brushes, mops, clean cloths, hose, nozzles, soaps, detergent, sprayers) shall be provided at convenient locations throughout the plant.

[36 FR 21040, Nov. 3, 1971]

§ 260.101 Lavatory accommodations.

Modern lavatory accommodations, and properly located facilities for cleaning and sanitizing utensils and hands, shall be provided.

(a) Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water (135° F. or more) and cold water, soap, and single service towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places as may be essential to the cleanliness of all personnel handling products.

(b) Sufficient containers with covers shall be provided for used towels and other wastes.

(c) An adequate number of hand washing facilities serving areas where edible products are prepared shall be operated by other than hand-operated controls, or shall be of a continuous flow type which provides an adequate flow of water for washing hands.

(d) Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash hands before returning to work.

(e) Toilet facilities shall be provided according to the following formula:

Number of persons	Toilet bowls required
1 to 15, inclusive	1
16 to 35, inclusive	2
36 to 55, inclusive	[1] 3
56 to 80, inclusive	[1] 4
For each additional 30 persons in excess of 80	[1] 1

[1] Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls required.

All toilet equipment shall be kept operative, in good repair, and in a sanitary condition.

[36 FR 21041, Nov. 3, 1971]

§ 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to processed products, in an efficient, clean, and sanitary manner, and

(b) Permit easy access to all parts to insure thorough cleaning and effective bactericidal treatment. Insofar as is practicable, all such equipment shall be made of smooth impermeable corrosion-resistant material that will not adversely affect the processed product by chemical action or physical contact. Such equipment shall be kept in good repair and sanitary condition. Such equipment shall be cleaned and sanitized at a frequency as is necessary or required in accordance with Good Manufacturing Practice Regulations, 21 CFR Part 128.

[36 FR 21041, Nov. 3, 1971]

§ 260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.

(a) All operators in the receiving transporting, holdings, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other microorganisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in § 260.96 to § 260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless rewashed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the "RETAINED" identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and

conspicuous manner with the word "RETAINED." Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the "RETAINED" identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

§ 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) *Disease control.* No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

(1) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygenic practices while on duty, to the extent necessary to prevent contamination of food products.

(2) Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(3) Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

(4) If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

(5) Wear hair nets, caps, masks, or other effective hair restraints. Other persons that may incidentally enter the processing areas shall comply with this requirement.

(6) Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(7) Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]

LABELING REQUIREMENTS

§§ 260.200—260.201 [Reserved]

PART 261—UNITED STATES STANDARDS FOR GRADES OF WHOLE OR DRESSED FISH

Subpart A—United States Standards for Grades of Whole or Dressed Fish

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261.171 Definitions and methods of analysis.

261.175 Tolerances for certification of officially drawn samples.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52750, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Whole or Dressed Fish

§ 261.101 Scope and product description.

This standard shall apply to whole or dressed fish, whether fresh or frozen, of any species suitable for use as human food and processed and maintained in accordance with good manufacturing practices.

§ 261.102 Product forms.

(a) *Types.* (1) Fresh.

(2) Frozen solid packs; glazed or unglazed.

(3) Frozen individually; glazed or unglazed.

(b) *Styles.* (1) Whole.

(2) Dressed-eviscerated.

(3) Head-on or headless.

(4) With or without fins.

(5) Skin-on scaled or unscaled; semiskinned (epidermis removed) or skinless.

(6) Other (as specified).

§ 261.103 Grades—quality factors.

(a) *U.S. Grade A.* Whole or dressed fish shall:

(1) Possess good flavor and odor and;

(2) Comply with the limits for defects for U.S. Grade A quality in accordance with § 261.104.

(b) *U.S. Grade B.* Whole or dressed fish shall:

(1) Possess reasonably good flavor and odor and;

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 261.104.

(c) *Substandard.* Whole or dressed fish does not possess reasonably good flavor and odor and/or exceeds the limits for defects for U.S. Grade B quality in accordance with § 261.104.

§ 261.104 Determination of grade.

(a) *Procedures for grade determination.*The grade shall be determined by sampling in accordance with the sampling plan described in paragraph (b) of this section evaluating odor and flavor in accordance with paragraph (c) of this section examining for defects in accordance with paragraphs (d), (e) and (f) of this section and using the results to assign a grade as described in paragraph (g) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections, other than for military procurement, shall be in accordance with the sampling plans contained in Part 260 of this chapter except that the sample unit is ten (10) fish for fish weighing up to 10 pounds. Fish weighing over ten (10) up to fifty (50) pounds—the sample unit shall be five (5) fish. For fish weighing over fifty (50) pounds, the sample unit shall be a minimum of three (3).

(c) *Evaluation of flavor and odor.* (1) Evaluation of the odor on each of the raw fish in the sample unit shall be carried out as follows:

(i) For the examination of small units, break the flesh or thawed sample either with the thumbs or by cutting with a knife in several places. Hold the cut or broken flesh close to the nose for evaluation.

(ii) For the examination of large units, a core may be used. Drill a hole into the hard frozen fish with a high-speed quarter inch drill. As soon as the drill is withdrawn, the hole and drillings are smelled.

(2) If the results of the raw odor evaluation indicate the existence of any off-odors, the sample shall be cooked by any of the methods set forth below to verify the flavor and odor.

(i) *Boil in bag method.* Insert the sample into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the product reaches 160 degrees F.).

(ii) *Steam method.* Wrap the sample in a single layer of aluminum foil, and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product for 20 minutes.

(iii) *Bake method.* Package the product as previously described. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400 degrees F. for 20 minutes.

(3) The amount of material to be cooked shall be based on the results of the raw odor evaluation. A minimum of 25 percent of the sample except that not less than 3 sample units shall be used.

(d) *Examination for physical defects.* Each of the fish in the sample will be examined for defects using the list of defect definitions, and the defects noted and categorized as minor, major, and serious in accordance with Table 1.

(e) *Definitions of defects in whole or dressed fish.* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the fish is adversely affected. It includes, but is not limited to, the following examples:

(i) Jellied—refers to the abnormal condition wherein a fish is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish is partly or wholly characterized by a dry, chalky, granular appearance, and fibrous structure.

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) "Appearance defects" shall refer to the overall general appearance of the fish (consistency of the flesh, odor, eyes, gills, and skin) and presence of excessive blood or drip and appearance of the package.

(i) Slight—refers to an appearance defect that is slightly noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(ii) Moderate—refers to an appearance, defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(iii) Excessive—refers to an appearance defect that is conspicuously noticeable and that does seriously affect the appearance, desirability, and/or eating quality of the fish.

(3) "Discoloration" refers to any color not characteristic of the species used.

(i) Slight—refers to the area affected by discoloration of significant intensity involving up to 10 percent of the total area.

(ii) Moderate—refers to the area affected by discoloration of significant intensity involving over 10 percent and up to 50 percent of the total area.

(iii) Excessive—refers to the area affected by discoloration of significant intensity involving 50 percent or more of the total area.

(4) "Dehydration" refers to loss of moisture from fish surfaces during frozen storage. For skin-on fish, dehydration shall be evaluated by degree of dullness and shrinkage.

(i) Slight dehydration—is surface color masking affecting more than 3 percent of the area which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(5) "Surface defects" shall refer to the following where applicable:

(i) Scales. An occurrence of attached or loose scales in any sample unit (where applicable).

(ii) Blood spot. An accumulation of coagulated opaque, masses of blood on a fish.

(iii) Fins or pieces of fin. An occurrence or absence of attached or loose fins or pieces of fin in any sample unit (where applicable). Dorsal spine shall be removed (where applicable).

(iv) Skin. The presence of the dark or light inner layers of skin for skinless. For semiskinned, reference is to the presence of the dark outside layers.

(v) Bruises. An accumulation of damaged portions of fish muscle, red and opaque in appearance (on a fish).

(vi) Damage to protective coating refers to voids in ice glaze or tears in covering membrane, also to breaks or splits in the skin which are readily discernible and not normally part of the processing.

(6) "Cutting and trimming defects" refers to the following:

(i) Body cavity cuts—refers to misplaced cuts made during evisceration.

(ii) Improper heading (as specified)—refers to the presence of pieces of gills, gill cover, pectoral fins (spine), or collarbone after the fish have been headed. No ragged cuts should be evident after heading.

(iii) Evisceration defects—refers to inadequate cleaning of the belly cavity of the fish. All viscera, kidney (where applicable), spawn, and blood should be removed.

(A) Slight degree of improper evisceration and improper heading refers to a condition that is scarcely noticeable but does not affect the appearance, desirability, and/or eating quality of the fish.

(B) Moderate degree of improper evisceration and improper heading refers to a condition that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(C) Excessive degree of improper evisceration refers to a condition that is conspicuously noticeable and that seriously affect the appearance, desirability, and/or eating quality of the fish.

(iv) Improper washing—inadequate removal of slime, blood, and bits of viscera from the surface of the fish and from the body cavity.

(v) Belly burn—an enzymatic action on the flesh causing a burned or discolored appearance.

(7) "Texture defects" texture of the cooked fish; not characteristic of the species.

(i) Slight—fairly firm, only slightly tough or rubbery, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.*

TABLE I

Physical defects		Categories		
Types	Degree	Minor	Major	Serious
Abnormal condition	Moderate		201	
	Excessive			301
Appearance defects	Slight	102		
	Moderate		202	
	Excessive			302
Discoloration	Slight	103		
	Moderate		203	
	Excessive			303
Dehydration	Slight—more than 3 percent area affected and easily removed.	104		
	Moderate—less than 3 percent area affected but difficult to remove.		204	
	Excessive—greater than 3 percent area affected			304
Surface defects	Slight—3 to 10 percent area affected	105		
	Moderate—greater than 10 percent area affected		205	
Cutting and trimming defects	Body cavity cuts	106		
	Improper heading:			
	Slight	107		

TABLE I—Continued

Physical defects		Categories		
Types	Degree	Minor	Major	Serious
	Moderate		206	
	Evisceration defects:			
	Slight	108		
	Moderate		207	
	Excessive			305
	Improper washing	109		
	Belly burn		208	
Texture defects	Slight	110		
	Moderate		209	
	Excessive			306

NOTE: The code numbers shown in the above table are for identification of defects for recording purposes only and are keyed to the nature and severity of the defect. They are not scores.

(g) *Grade assignment.* (1) Each fish in a sample unit will be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

Flavor and odor		Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	
Grade B	Reasonably good.	5	1	

(2) Upon determination of grade of each fish in each sample unit, the sample will be designated a grade as follows:

(i) *Grade A.*

Number of subsample units (fish)	Min. No. grade A fish	Max. No. grade B fish	Max. No. substandard
10 (up to 10 lb)	8	2	0
5 (10 to 50 lb)	4	1	0
3 (over 50 lb)	3	0	0

(ii) *Grade B.*

Number of subsample units (fish)	Minimum number of grade B fish	Maximum number of substandard
10 (up to 10 lb)	8	2
5 (10 to 50 lb)	4	1
3 (over 50 lb)	3	0

(iii) *Substandard.* Any fish not meeting the minimum requirements for Grade B quality.

(3) Upon determination of the grade for each sample unit a lot of whole or dressed fish shall be assigned that grade in which:

(i) For physical defects, the number of sample units in the next lower grade does not exceed the acceptance number for deviants prescribed in § 260.61 of the sampling plan, Table II, of Title 50; and

(ii) Not more than 5 percent of the fish in the sample (total fish examined per lot) are in the next lower grade for odor and/or flavor.

NOTE: Sampling for inspection for military procurement shall be in accordance with MIL-STD-105. Lot size shall be expressed in terms of pounds. The sample size shall be in accordance with Inspection Level S-3. Acceptable Quality Levels shall be expressed in terms of defects per hundred units. The AQL's shall be 6.5 for minor and 4.0 for major.

[42 FR 52750, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 261.105 Hygiene.

Whole or dressed fish shall be processed and maintained in accordance with the applicable requirements of the regulations contained in §§ 260.96 to 260.103 of this chapter and of the good manufacturing practice regulations contained in 21 CFR Part 110.

[42 FR 52750, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

Subpart B—United States Standards for Grades of Frozen Headless Dressed Whiting

§ 261.151 Description of the product.

The product described in this part consists of clean, wholesome whiting (silver hake) *Merluccius bilineraris, Merluccius albidus;* completely and cleanly headed and adequately eviscerated. The fish are packaged and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 261.152 Grades of frozen headless dressed whiting.

(a) "U.S. Grade A" is the quality of frozen headless dressed whiting that (1) possess a good flavor and odor and that (2) for those factors that are rated in accordance with scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen headless dressed whiting that (1) possess at least reasonably good flavor and odor and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen headless dressed whiting that meet the requirements of § 261.151 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 261.161 Determination of the grade.

In a plant under USDC Contract Inspection the grade is determined by examining the product for factors 1 to 10 in the thawed state and factor 11 in the cooked state. For lot inspection, examination of the product for factors 1, 2 and 3 is carried out in the frozen state and 4 to 10 in the thawed state. Factor 11 is examined in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100 the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 261.171.

(1) Good flavor and odor (essential requirements for a U.S. Grade A product) means that the cooked product has the typical flavor and odor of the species and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S. Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
	FROZEN STATE (LOT INSPECTION ONLY)	
1 Arrangement of product[1]	Small degree: 10 percent of fish twisted or bellies and backs not facing the same direction.	2
	Large degree: More than 10 percent of fish twisted, void present or some fish cross packed.	5
2 Condition of packaging (overall assessment).	Poor: Packaging material has been soaked, softened or deteriorated	2
3 Dehydration	Small degree: Slight dehydration of the exposed surfaces	2
	Large degree: Deep dehydration of the exposed surfaces	5

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE—Continued

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
	THAWED STATE	
4 Minimum size: Fish 2 oz. or over are of acceptable size.	Number of fish less than 2 oz. per lb:	
	Over 0—not over 0.5	5
	Over 0.5—not over 1.0	10
	Over 1.0—not over 2.0	20
	Over 2.0	30
5 Uniformity. Weight ratio of fish remaining. The 10 percent largest fish divided by the 10 percent smallest fish.	Weight ratio 10 percent smallest and 10 percent largest:	
	Over 2.0—not over 2.4	2
	Over 2.4—not over 2.8	5
	Over 2.8—not over 3.2	10
	Over 3.2—not over 3.6	20
	Over 3.6	30
6 Heading [1]	Small degree: 10 percent of fish carelessly cut	5
	Moderate degree. Over 10 percent of fish carelessly cut	15
7 Evisceration (overall assessment)	Small degree: Slight evidence of viscera	2
	Moderate degree: Moderate amounts of spawn, viscera, etc	10
	Large degree. Large amounts of viscera, spawn, etc	30
8 Scaling [1]	Small degree: 10 percent of fish not well scaled	2
	Large degree: Over 10 percent of fish not well scaled	5
9 Color of the exposed surfaces (overall assessment).	Small degree: Minor darkening, dulling	2
	Large degree: Objectionably dark, brown, dull	5
10 Bruises and split or broken skin	Presence of bruises and/or broken or split skin per pound:	
	Over 0—not over 0.5	1
	Over 0.5—not over 1.0	2
	Over 1.0—not over 1.5	4
	Over 1.5—not over 2.0	7
	Over 2.0	10
11 Texture (overall assessment)	Small degree: Moderately dry tough, mushy, rubbery, watery, stringy	5
	Large degree: Excessively dry, tough, mushy, rubbery, watery, stringy	15

[1] 10 percent of fish refers to 10 percent by count rounded to nearest whole fish.

[42 FR 52750, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 261.171 Definitions and methods of analysis.

(a) *Selection of the sample unit.* The sample unit consists of the primary container and its entire contents. The whiting are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* When this product is examined under USDC Contract Inspection, the samples are examined for factors 1, 2, and 3 in Table 1 in the thawed state. When the product is lot inspected, the samples are examined for factors 1, 2, and 3 in Table 1 in the frozen state.

(1) *"Arrangement of product"* refers to the packing of the product in a symmetrical manner, bellies or backs all facing in the same direction, fish neatly dovetailed.

(2) *"Condition of the packaging material"* refers to the condition of the cardboard or other packaging material of the primary container. If the fish is allowed to stand after packing and prior to freezing moisture from the fish will soak into the packaging material and cause deterioration of that material.

(3) *"Dehydration"* refers to the presence of dehydrated (water-removed) tissue on the exposed surfaces of the whiting. Slight dehydration is surface dehydration which is not color-masking. Deep dehydration is color-masking and cannot be removed by scraping with a fingernail.

(c) *Examination of sample, thawed state.* Thawed state means the state of the product after being thawed. Thawing the sample is best accomplished by enclosing the sample in a film type bag and immersing in an agitated water bath held at 68° F., ±2° F. Allow the product to remain immersed until thawed. Alternatively when the facilities are lacking for water thawing, the sample may be thawed by slacking it out at a temperature between 30° to 40° F. on an aluminum tray from 2 hours for a 1½-pound sample to 8 hours for a 10-pound sample.

(1) *"Minimum size"* refers to the size of the individual fish in the sample. Fish 2 ounces or over are considered acceptable. Smaller fish cannot be cooked uniformly with acceptable size fish. Separate the fish of unacceptable size, divide their number by the weight of the sample in pounds, and apply to Table 1. Example—four fish of unacceptable size in a 5-pound package is ⅘=0.8, a 10 point deduction.

(2) *"Uniformity."* From the fish remaining, select by count 10 percent (minimum of one fish) of the largest and 10 percent (minimum of one fish) of the smallest and divide the largest weight by the smallest weight to get a weight ratio.

(3) *"Heading"* refers to the condition of the fish after they have been headed. The fish should be cleanly headed behind the gills and pectoral fins. No gills, gill bones, or pectoral fins should remain after the fish have been headed.

(4) *"Evisceration"* refers to the cleaning of the belly cavities of the fish. All spawn, viscera, and belly strings should be removed.

(5) *"Scaling"* refers to the satisfactory removal of scales from the fish.

(6) *"Color of the cut surfaces"* refers to the color of the cut surfaces of the fish after heading and other processing.

(7) *"Bruises and broken or split skin"* refers to bruises over one-half square inch in area and splits or breaks in the skin more than one-half inch in length which are not part of the processing.

(d) *Examination of sample, cooked state.* Cooked state means the state of the sample after being cooked. Cooking the sample is best accomplished by inserting the sample into a film type bag and submerging it into boiling water for from 18-20 minutes. A minimum of three fish per sample unit shall be cooked.

(1) *"Texture defects"* refers to the absence of normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects are dryness, softness, toughness, and rubberyness.

(e) *General definitions.* (1) *Small* (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) *Moderate* (overall assessment) refers to a condition that is distinctly noticeable but is not seriously objectionable.

(3) *Large* (overall assessment) refers to a condition which is both distinctly noticeable and seriously objectionable.

§ 261.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter. (Regulations Governing Processed Fishery Products).

PART 262—UNITED STATES STANDARDS FOR GRADES OF FISH STEAKS

Subpart A—[Reserved]

Subpart B—United States Standards for Grades of Frozen Halibut Steaks

Sec.
262.151 Product description.
262.152 Styles of frozen halibut steaks.
262.153 Grades of frozen halibut steaks.
262.156 Recommended dimensions.
262.161 Ascertaining the grade.
262.171 Definitions and methods of analysis.
262.175 Tolerances for certification of officially drawn samples.

Score Sheet

262.181 Score sheet for frozen halibut steaks.

Subpart C—United States Standards for Grades of Frozen Salmon Steaks

262.201 Product description.
262.202 Styles.
262.203 Grades.

262.206 Recommended dimensions.
262.211 Ascertaining the grade.
262.221 Definitions.
262.225 Tolerances for certification of officially drawn samples.
262.231 Score sheet for frozen salmon steaks.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52753, Sept. 30, 1977, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—United States Standards for Grades of Frozen Halibut Steaks

§ 262.151 Product description.

Frozen halibut steaks are clean, wholesome units of frozen raw fish flesh with normally associated skin and bone and are 2 ounces or more in weight. Each steak has two parallel surfaces and is derived from whole or subdivided halibut slices of uniform thickness which result from sawing or cutting perpendicular to the axial length, or backbone, of a whole halibut. The steaks are prepared from either frozen or unfrozen halibut (Hippoglossus spp.) and are processed and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 262.152 Styles of frozen halibut steaks.

(a) *Style I, random weight pack.* The individual steaks are of random weight and neither the weight nor the range of weights are specified.

(b) *Style II, uniform weight or portion pack.* All steaks in the package or in the lot are of a specified weight or range of weights.

§ 262.153 Grades of frozen halibut steaks.

(a) "U.S. Grade A" is the quality of frozen halibut steaks which possess good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen halibut steaks which possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen halibut steaks which fail to meet the requirements of the "U.S. Grade B."

§ 262.156 Recommended dimensions.

(a) The recommended dimensions of frozen halibut steaks are not incorporated in the grades of the finished product since dimensions, as such, are not factors of quality for the purpose of these grades. However, the degree of uniformity of thickness among units of the finished product is rated since it is a factor affecting the quality and utility of the product.

(b) It is recommended that the thickness (smallest dimension) of individually frozen halibut steaks be not less than ½ inch and not greater than 1¼ inches.

§ 262.161 Ascertaining the grade.

The grade is ascertained by observing the product in the frozen, thawed, and cooked states and is evaluated by consideration of the following:

(a) *Factors rated by score points.*The quality of the product with respect to scored factors is expressed numerically. Cumulative point deductions are assessed for variations of quality for each factor in accordance with the schedule in Table I, in the frozen, thawed, and cooked states. The total deduction is subtracted from the maximum possible score of 100 to obtain the product score.

(b) *Factors not rated by score points.*The factors of flavor and odor are evaluated organoleptically in the cooked state for both the light and dark meat (surface fat) and are defined as follows:

(1) *Good flavor and odor.* "Good flavor and odor" (essential requirement for Grade A) means that the fish flesh has the good flavor and odor characteristics of halibut, and is free from rancidity and from off-flavors and off-odors.

(2) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for Grade B)

means that the fish flesh may be somewhat lacking in the good flavor and odor characteristic of halibut, is reasonably free of rancidity, and is free from objectionable off-flavors and off-odors.

(3) *Substandard flavor and odor.* "Substandard flavor and odor" (Substandard grade) means that the flavor and odor fail to meet the requirements of "reasonably good flavor and odor."

(c) *Determination of final product grade.* The final product grade is derived on the basis of both the product score as determined by the "factors rated by score points" and the grade requirements of flavor and odor as defined under "factors not rated by score points." The lower of the two determines the final grade.

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]

Factor	Description of quality variation	Deduct
	FROZEN	
	Per steak	
1 Dehydration [2]	Surface area affected:	
	Less than 1 square inch but obvious	1
	1 to 2 square inches	2
	Above 2 square inches	3
2 Percentage glaze	Over 0.0, not over 6.0 percent by weight of sample unit	0
	Over 6.0, not over 7.0	1
	Over 7.0, not over 8.0	2
	Over 8.0, not over 9.0	3
	Over 9.0	4
3 Uniformity of thickness	For each 1/16 inch above 1/8 inch variation in steak thickness (maximum total deduction permitted 6 points per sample unit).	2
4 Uniformity of weight and minimum weight.	Style I—Random weight.—Use either (a) or (b), whichever gives a greater deduction.	
	(a) For each steak less than 3.0 ounces in weight per sample package.	4
	(b) For each 0.1 ounce below 4.0 ounces in average steak weight per sample.	½
	Style II—Uniform weight or portions.—For each full 1 percent of the steaks deviating by more than 0.6 ounce from the specified portion weight or the average of the specified portion range (per sample package).	2
	THAWED	
5 Workmanship—Defects of: Cutting, collar bone, loose skin, fins, blood spots, bruises, foreign material, backbone, cartilage, sawdust [3].	Slight or moderate	1
	Excessive	2
	(For each defect, per occurrence, per sample package or per 2 pounds for packages over 2 pounds net weight).	
	(Per sample unit)	
6 Color defects:		
(a) Discoloration of drip liquor	Slight	1
	Moderate	2
	Excessive	3
	(Per steak)	
	Slight	1
(b) Discoloration of light meat [2]	Moderate	2
	Excessive	3
	(Per steak)	
(c) Discoloration of dark meat [2]	Slight	1
	Moderate	2
	Excessive	3
	(Per sample unit)	
(d) Non-uniformity of color	Slight	1
	Moderate	2
	Excessive	3
	(Per steak)	
7 Honeycombing [2]	Surface area affected:	
	26 to 50 percent	½

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]—Continued

Factor	Description of quality variation	Deduct
	51 to 75 percent	1
	76 to 100 percent	2
	COOKED	
	(Per steak)	
8 Texture defect [2] (tough, dry, fibrous, or watery).	Slight	1
	Moderate	2
	Excessive	3

[1] This schedule of point deductions is based on the examination of sample units composed of: (a) An entire sample package and its contents (for retail sized packages) or (b) a representative subsample consisting of three or more halibut steaks taken from each sample package (for institutional sized packages), except that the entire sample package shall be examined for factor 4.

[2] Point deductions for these factors are based on a 3-steak sample unit. For samples containing other than 3 steaks per sample unit or per package, multiply the results by the correction factor 3/*n* where *n* equals the number of steaks.

[3] Sawdust is examined while the steaks are in the frozen state.

[42 FR 52753, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 262.171 Definitions and methods of analysis.

(a) "Percentage glaze" on halibut steak means the percent by weight of frozen coating adhering to the steak surfaces and includes the frost within the package. It is determined by the method described below or by methods giving equivalent results.

(1) *Equipment needed.* (i) Source of cold tap water with aerated faucet.

(ii) Balance accurate to 0.1 gm.; or 0.01 ounce.

(iii) Paper towels.

(iv) Small knife.

(2) *Procedure.* (i) Weigh package in overwrap and all its contents (A).

(ii) Remove steaks and loose frost; weigh dry packaging (B).

(iii) The difference in weight, A-B represents weight of steaks plus glaze (C).

(iv) Remove glaze from halibut steaks.

(*a*) Adjust tap water to a flow rate of about 3 quarts/min. through an aerated faucet.

(*b*) Direct 50° to 60° F. tap water onto skin side of steak while gently feeling and rubbing cut surfaces with finger tips (if necessary, temperatures up to 80° F. may be used but require closer control).

(*c*) When all glaze is removed from cut flesh surface, as evidenced by absence of slick feel to fingers, remove steak from water.

(*d*) Rapidly remove excess water with single paper towel before it has time to refreeze on the steak, and flick off residual skin glaze by knife or hand.

(*e*) Repeat steps (*b*), (*c*), and (*d*) on each steak in package or sample unit.

(*f*) Weigh deglazed halibut steaks (D, actual net weight of sample).

(Steps (*a*) through (*f*) of this paragraph (a)(2)(ii) are completed within 3 minutes.)

(v) Calculate percentage glaze: Percentage glaze $=C-D/C\text{x}100$.

(b) "Cooked state" means that the thawed product has been cooked in a suitable manner which is defined as being heated submerged in boiling water, unseasoned, and in a boilable film type pouch for 10 minutes. (Steaks over 1 inch in thickness may require 5 additional minutes for heating.)

(c) "Uniformity of thickness" means that the thickness is substantially the same for one or more steaks within a package or sample unit.

(d) Color defects: (1) "Discoloration of drip liquor" means that the free liquid which drains from the thawed steaks is discolored with blood residue usually from the dorsal aorta of the halibut.

(2) "Discoloration of light meat" means that the normal flesh color of the main part of the halibut steak has darkened due to deteriorative influences.

(3) "Discoloration of the dark meat" means that the normal color of the

surface fat shows increasing degrees of yellowing due to oxidation.

(4) "Nonuniformity of color" refers to noticeable differences in color on a single steak or between adjacent steaks in the same package.

(e) "Dehydration" refers to the appearance of a whitish area on the surface of a steak due to the removal of water or drying of the affected area.

(f) "Honeycombing" refers to the visible appearance of numerous discrete holes or openings of varying size on the steak surface.

(g) "Workmanship defects" refers to appearance defects that were not eliminated during processing and are considered either objectionable or poor commercial practice.

(h) "Texture defect" refers to an undesirable increase in toughness and/or dryness, fibrousness, and watery nature of halibut examined in the cooked state.

[42 FR 52753, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 262.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified on the basis of Part 260 of this chapter.

SCORE SHEET

§ 262.181 Score sheet for frozen halibut steaks.

GENERAL

Label
Size and kind of container
Container mark or identification
Size of lot
Number of samples
Actual net weight (ounces)
Number of steaks per container
Product style

Scored factors (table 1)	Deductions
Frozen:	
1. Dehydration	
2. Percentage glaze	
3. Uniformity of thickness	
4. Uniformity of weight	
Thawed:	
5. Workmanship	
6. Color defects	
7. Honeycombing	
Cooked: 8. Texture	
Total deductions	
Rating for scored factors (100—Total deductions)	

Unscored factors	Rating
Cooked:	
a. Odor	
b. Flavor:	
(light meat)	
(dark meat)	
Flavor and odor rating	
Final grade	

Subpart C—United States Standards for Grades of Frozen Salmon Steaks

§ 262.201 Product description.

Frozen salmon steaks are clean, wholesome units of frozen raw fish flesh with normally associated skin and bone and are 2.5 ounces or more in weight. Each steak has two parallel surfaces and is derived from whole or subdivided salmon slices of uniform thickness which result from sawing or cutting dressed salmon perpendicularly to the axial length, or backbone. The steaks are prepared from either frozen or unfrozen salmon (Oncorhynchus spp.) and are processed and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. The steaks in an individual package are prepared from only one species of salmon.

(a) *Species.* Frozen salmon steaks covered by this standard are prepared from salmon of any of the following species:

Silver or coho (O. kisutch).
Chum or keta (O. keta).
King, chinook, or spring (O. tshawytscha).
Red, sockeye (O. nerka).
Pink (O. gorbuscha).

§ 262.202 Styles.

(a) *Style I—Random weight pack.* The individual steaks are of random weight and neither the individual steak weight nor the range of weights is specified. The steaks in the lot represent the random distribution cut from the head to tail of a whole dressed salmon.

(b) *Style II—Random weight combination pack.* The individual steaks are of random weight and neither the individual steak weight nor range of weights is specified. The steaks in the lot represent a combination of cuts from selected parts of the whole dressed salmon.

(c) *Style III—Uniform weight or portion pack.* All steaks in the package or in the lot are of a specified weight or range of weights.

§ 262.203 Grades.

(a) "U.S. Grade A" is the quality of frozen salmon steaks that possess good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen salmon steaks that possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlines in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen salmon steaks that fail to meet the requirements of the "U.S. Grade B."

§ 262.206 Recommended dimensions.

(a) The recommended dimensions of frozen salmon steaks are not incorporated in the grades of the finished product since dimensions, as such, are not factors of quality for the purpose of these grades. However, the degree of uniformity of thickness among units of the finished product is rated since it is a factor affecting the quality and utility of the product.

(b) It is recommended that the thickness (smallest dimension) of individually frozen salmon steaks be not less than ½ inch and not greater than 1½ inches.

§ 262.211 Ascertaining the grade.

The grade is ascertained by observing the product in the frozen, thawed, and cooked states and is determined by consideration of the following:

(a) *Factors rated by score points.* The quality of the product with respect to all factors is scored numerically. Cumulative point deductions are assessed for variations of quality for the factors in accordance with the schedule in Table I, in the frozen, thawed, and cooked states. The total deduction is subtracted from the maximum possible score of 100 to obtain the "product score."

(b) *Factors governed by "limiting rule".* The factors of flavor and odor, in addition to being rated by score points, are further considered for compliance with the "limiting rule" grade requirements of flavor and odor in Table I, as defined under Definitions § 262.221(g)(9).

(c) *Determination of the final product grade.* The final product grade is derived on the basis of both the "product score" and the "limiting rule" grade requirements of flavor and odor, per Table I.

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]

[See footnotes at end of table.]

Scored factors	Description of quality variation	Deduct
FROZEN		
1. General appearance defects	Per occurrence:	
	Slight	1–2
	Moderate	3–4
	Excessive	5–10
2. Dehydration	(Per occurrence) for each 1 sq. inch of surface area	1
3. Uniformity of thickness	For each 1/16 inch above 1/8 inch variation tolerance in steak thickness (max. deduction: 6 points).	2
4. Uniformity of weight and minimum weight	Style I & II—Random weight. For each steak between 2.5 and 3.0 ounces in weight per package or per pound of product for packages over 1 pound net wt.	4

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]—Continued

[See footnotes at end of table.]

Scored factors	Description of quality variation	Deduct
	Style III—Uniform weight or portion. For each 0.1 ounce beyond the 0.1 ounce tolerance of the specified portion weight range per 5 lbs. of product.	1
THAWED		
5. Workmanship defects: Blood spots, bruises, cleaning, cutting, fins, foreign material, collarbone, girdle, loose skin, pugh marks, sawdust, scales.	Per occurrence:	
	Slight	1
	Moderate	2-5
	Excessive	6-8
6. Color defects:		
(a) Discoloration of fatty portion	Slight	1-5
	Moderate	3-5
	Excessive	6-10
(b) Discoloration of lean portion	Slight	1-2
	Moderate	3-5
	Excessive	6-10
(c) Non-uniformity of color	Slight	1-2
	Moderate	3-4
	Excessive	5-6
7. Honeycombing	Percent sample area affected:	
	26 to 50	1
	51 to 75	2
	75 to 100	3
COOKED		
8. Texture defect (tough, dry, fibrous, or watery)	Slight	1-2
	Moderate	3-5
	Excessive	6-10
9. Odor [2]	Good (A)	0-2
	Reasonably good (B)	3-5
	Substandard (S)	6-15
10. Flavor:		
(a) Lean portion	Good (A)	0-2
	Reasonably good (B)	3-5
	Substandard (S)	6-15
(b) Fatty portion	Good (A)	0-2
	Reasonably good (B)	3-5
	Substandard (S)	6-15

[1] This schedule of point deductions is based on the examination of sample units composed of: (a) An entire sample package and its contents (for retail sized packages) or (b) a representative subsample consisting of about one pound of salmon steaks taken from each sample package (for institutional sized packages), except that the entire sample package or its equivalent shall be examined for factor 4.

[2] "Limiting rule" grade requirements of flavor and odor: Salmon steaks which received over 5 deduction points for odor, or flavor of the lean, or flavor of the fatty portion, shall not be graded above substandard, and those which receive between 3 to 5 points shall not be graded above "U.S. Grade B," regardless of the total product score. (This is a "limiting rule" based on flavor and odor as defined under definitions § 262.221(g)(9)).

[42 FR 52753, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 262.221 Definitions.

(a) "Slight" refers to a defect that is scarcely noticeable and may not affect the appearance, the desirability, and/or eating quality of the steaks.

(b) "Moderate" refers to a defect that is conspicuously noticeable (not seriously objectionable) and does not seriously affect the appearance, desirability and/or eating quality of the steaks.

(c) "Excessive" refers to a defect that is conspicuously noticeable (seriously objectionable) and seriously affects the appearance, desirability, and/or eating quality of the steaks.

(d) "Occurrence" is defined as each incidence of the same or different types of defects.

(e) "Cooked state" means that the thawed, unseasoned product has been heated within a boilable film-type pouch by immersing the pouch with product in boiling water for 10 minutes. Steaks cooked from the frozen state may require about two additional minutes of cooking.

(f) "Actual net weight" means the weight of the salmon steaks within the package after removal of all packaging material, ice glaze or other protective coatings.

(g) "Scored factors" (Table I):

(1) "General appearance defects" refer to poor arrangement of steaks, distortion of steaks, wide variation in shape, between steaks greater than normal number of head and/or tail pieces, imbedding of packaging material into fish flesh, inside condition of package, frost deposit, excessive or non-uniform skin glaze, and undesirable level of natural color.

(2) "Dehydration" refers to the appearance of a whitish area on the surface of a steak due to the evaporation of water or drying of the affected area.

(3) "Uniformity of thickness" means that steak thickness is within the allowed ⅛-inch manufacturing tolerance between the thickest and thinnest parts of the steaks within a package or sample unit.

(4) "Uniformity of weight and minimum weight" is defined in Table I. (Portions are designated by "weight range" or "specified weight." The "weight range" of portions bearing "specified weight" designation on containers shall be taken as the "specifed weight" plus or minus 0.5 ounces unless otherwise specified.)

(5) "Workmanship defects" refers to appearance defects that were not eliminated during processing and are considered objectionable or poor commercial practice. They include the following: Blood spots, bruises, cleaning (refers to inadequate cleaning of the visceral cavity from blood, viscera and loose or attached appendages), cutting (refers to irregular, inadequate, unnecessary, or improper cuts and/or trimmings), fins, foreign material (refers to any loose parts, of fish or other than fish origin), collar bone, girdle (refers to bony structure adjacent to fin), loose skin, pugh marks, sawdust and scales.

(6) "Color defects": (i) "Discoloration of fat portion" means that the normal color of the fat shows increasing degrees of yellowing due to oxidation.

(ii) "Discoloration of lean portion" means that the normal surface flesh color has faded or changed due to deteriorative influences.

(iii) "Nonuniformity of color" refers to noticeable differences in surface flesh color on a single steak or between adjacent steaks in the same package or sample unit. It also includes color variation of the visceral cavity and skin watermarking.

(7) "Honeycombing" refers to the visible appearance on the steak surface of numerous discrete holes or openings of varying size.

(8) "Texture defect" refers to an undersirable increase in toughness and/or dryness, fibrousness, and watery nature of salmon examined in the cooked state.

(9) "Odor" and "flavor": (i) "Good flavor and odor" (essential requirement for Grade A) means that the fish flesh has the good flavor and odor characteristic of the indicated species of salmon, and is free from rancidity and from off-flavors and off-odors.

(ii) "Reasonably good flavor and odor" (minimum requirement for Grade B) means that the fish flesh may be somewhat lacking in the good flavor and odor characteristics of the indicated species of salmon, is reasonably free of rancidity, and is free from objectionable off-flavors and off-odors.

(iii) "Substandard flavor and odor" (substandard grade) means that the flavor and odor fail to meet the requirements of "reasonably good flavor and odor."

[42 FR 52753, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 262.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified on the basis of Part 260 Subpart A of this chapter, (Regulations Governing Processed Fishery Products).

§ 262.231 Score sheet for frozen salmon steaks.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....

Size of sample ....
Number of steaks per container ....
Product style ....
Actual net weight .... (ounces) .... (lb.) ....

Scored factors	Deductions
FROZEN	
1. General appearance defects	
2. Dehydration	
3. Uniformity of thickness	
4. Uniformity of weight	
THAWED	
5. Workmanship defects	
6. Color defects	
7. Honeycombing	
COOKED	
8. Texture	
9. Odor (Limiting rule—Table I)	
10. Flavor (Limiting rule—Table I)	
Total deductions	
Product score (100—Total deductions)	
Flavor and odor rating	
Final grade	

PART 263—UNITED STATES STANDARDS FOR GRADES OF FISH FILLETS

Subpart A—United States General Standards for Grades of Fish Fillets

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Subpart B—United States Standards for Grades of Cod Fillets

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SCORE SHEET

263.181 Score sheet for cod fillets.

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263.264 Appearance.
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263.271 Definitions and methods of analysis.
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263.321 Cooking in a suitable manner.
263.325 Tolerances for certification of officially drawn samples.
263.331 Score sheet for ocean-perch fillets.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52756, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States General Standards for Grades of Fish Fillets

Source: 44 FR 32386, June 6, 1979, unless otherwise noted.

§ 263.101 Scope and product description.

(a) This standard shall apply to fresh or frozen fillets of fish of any species that are suitable for use as human food and processed and maintained in accordance with good manufacturing procedures. It does not apply to products covered by Subparts B, C, D, and E of Part 263.

(b) Fillets are slices of practically boneless fish flesh of irregular size and shape, which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

§ 263.102 Product forms.

(a) *Types:* (1) Fresh.

(2) Frozen individually (IQF); glazed or unglazed.

(3) Frozen solid packs; glazed or unglazed.

(b) *Styles:* (1) Single.

(i) Skin-on.

(ii) Skin-on scaled.

(iii) Skin-on (white side only) (applies only to flatfish).

(iv) Skin-off (skinless).

(2) Butterfly.

§ 263.103 Grades.

(a) *U.S. Grade A.* Fish fillets shall:

(1) Possess good flavor and odor characteristic of the species; and

(2) Comply with the limits for defects for U.S. Grade A quality as outlined in § 263.104.

(b) *U.S. Grade B.* Fish fillets shall:

(1) Possess reasonably good flavor and odor characteristic of the species; and

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 263.104.

(c) *U.S. Grade C.* Fish fillets shall:

(1) Possess minimal acceptable flavor and odor characteristic of the species with no objectionable off-flavors or off-odors; and

(2) Comply with the limits for defects for U.S. Grade C quality in accordance with § 263.104.

(d) *"Substandard".* Fish fillets shall:

(1) Possess minimal acceptable flavor and odor characteristics of the species with no objectionable off-flavors or off-odors; and

(2) Fail to meet the limits for physical defects for U.S. Grade C quality given under § 263.104, paragraphs (d), (e), and (f).

§ 263.104 Grade determination.

(a) *Procedures for grade determination:* The grade shall be determined by evaluating the product in the frozen, and/or thawed, and cooked states. Each defect is classified as to its relative severity as minor, major, or serious in accordance with paragraphs (d), (e), and (f) of this section. Odor and flavor are evaluated in accordance with paragraph (c) of this section. Tolerances for the various defects are set for each grade classification according to group species.

(b) *Sampling.* Sampling is to be done in accordance with the Regulations Governing Processed Fishery Products, Title 50, Chapter II, Subchapter G, § 260.61, Tables II, V, or VI, where applicable. The sample unit shall be the container and its entire contents for containers up to 10 pounds. A representative 3 pound sample unit for containers over 10 pounds shall be used.

(c) *Evaluation of flavor and odor.* (1) Evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For evaluation of the odor of raw fillets, the thawed fillets should be broken and the broken flesh held close to the nose immediately to detect off-odor.

(2) If raw odor evaluation indicates any noncharacteristic and/or off-odors, the sample unit or parts thereof shall be cooked by any of the following methods for verification of results of raw odor evaluation:

(i) *Baked method.* Package the product in aluminum foil. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F until the internal temperature of the product reaches 160° F.

(ii) *Boil in bag method.* Insert the thawed unseasoned sample into a boilable film-type pouch. Fold open end of the pouch over a suspension bar. Clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents until the internal temperature of the product reaches 160°F.

(iii) *Steam method.* Wrap the sample in a single layer of aluminum foil and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product until the internal temperature of the product reaches 160°F.

(d) *Examination for physical defects:* Each sample unit shall be examined for defects using the list of defect definitions that follow. Defects will be categorized as minor, major, and serious according to Table 1 of this standard.

(e) *Definition of defects in fillets:* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the flesh is adversely affected. It includes but is not limited to the following:

(i) Jellied—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish fillet is partly or wholly characterized by a dry, chalky, granular appearance, and fiberless structure.

The intensity of abnormal conditions is defined as follows:

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability, and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) Appearance defect—refers to the color of the fish flesh and to the degree of surface dehydration of the product.

(i) Color defect—refers to any readily discernable abnormal coloration including bruises, blood spots, browning, yellowing, and melanin spotting. Each square inch (6.5 cm²) of affected area is counted as one instance as determined by a transparent grid of 1 inch squares.

The extent of appearance defects is defined as follows:

(A) Slight—2-4 instances.

(B) Moderate—5-6 instances.

(C) Excessive—over 6 instances.

(ii) Dehydration—refers to loss of moisture from fish fillet surfaces during frozen storage.

(A) Slight dehydration—is surface color masking affecting more than 5 percent of surface area which can be readily removed by scraping with a blunt instrument.

(B) Moderate dehydration—is deep color masking penetrating the flesh affecting less than 5 percent, but more than 1 percent of surface area and requiring a knife or other sharp instrument to remove.

(C) Excessive dehydration—is deep color masking penetrating the flesh affecting more than 5 percent of surface area and requiring a knife or other sharp instrument to remove.

(3) Workmanship defects refer to:

(i) Cutting and trimming imperfections, ragged edges, holes, tears, and improper or misplaced cuts. Each square inch (6.5 cm²) of affected area is counted as one instance whether it is full or fractional. "Ragged edges" refers to the irregular or shredded appearance of the fillet edge.

(ii) Scales, fins, or pieces of fins or extraneous material.

(A) Scales (skin-off) scaled fillets—An occurrence of attached or loose scales in any sample unit up to 1 square inch (6.5 cm²) is counted as one instance. Each additional 1 square inch (6.5 cm²) is an additional instance.

(B) Fins—Any fin or parts of any fin up to 1 square inch (6.5 cm²) in area shall be considered one instance of fin.

(C) Extraneous material means any piece of foreign matter on the fillet or elsewhere in the package. Each occurrence is considered one instance.

The extent of workmanship defects is defined as follows:

Slight degree—1-2 instances.
Moderate degree—3-4 instances.
Excessive degree—over 4 instances.

(4) Bone—refers to a bone, or piece of bone, that exceeds either the dimension 15 mm in length or 0.355 mm in diameter. Each area of one inch square (6.5 cm^2) which contains a bone or a cluster of bones shall be regarded as one instance of bones. The amount of bones is defined as follows:

Slight—1 instance.
Moderate—2-4 instances.
Excessive—over 4 instances.

(5) Skin—includes exterior skin and black membrane (belly lining).

(i) For skinless fillets, each piece of skin up to 1 square inch (6.5 cm^2) and every additional complete 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

(ii) In the case of skin-on or skinless fillets, each piece of black membrane (belly lining) up to 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

The amount of skin is defined as follows:

Slight degree—1 instance.
Moderate degree—2-4 instances.
Excessive degree—over 4 instances.

(6) Size of fillets—refers to the freedom from undesirably small pieces of fillets. Undesirably small shall mean any piece of fillet weighing less than 1 ounce (30 grams) per container. Moderate degree—2 pieces. Excessive—over 2 pieces.

(7) "Texture defects"—refers to the texture of the cooked fish being not characteristic of the species.

(i) Slight—fairly firm, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.* Instances shall be assessed on a per pound basis for physical defects, except for defects relating to abnormal conditions, texture, dehydration and sizes of fillets.

TABLE 1—DEFECT TABLE

Defect description	Classification		
	Minor	Major	Serious
1. Abnormal Condition:			
Moderate		2	
Excessive			4
2. Appearance:			
(a) Color defects:			
Slight (2–4 instances)	1		
Moderate (5–6 instances)		2	
Excessive (over 6 instances)			4
(b) Dehydration:			
Slight (surface <5% of area)	1		
Moderate (deep 1 to 5% of area)		2	
Excessive (deep >5% of area)			4
3. Workmanship defects:			
(a) Cutting and trimming:			
Slight (1-2 instances)	1		
Moderate (3–4 instances)		2	
Excessive (over 4 instances)			2
(b) Scales, fins, extraneous material:			
Slight (1-2 instances)	1		
Moderate (3–4 instances)		2	
Excessive (over 4 instances)			2
4. Bones:			
Slight (1 instance)	1		
Moderate (2–4 instances)		2	
Excessive (over 4 instances)			4
5. Skin and Membrane:			
Slight (1 instance)	1		
Moderate (2–4 instances)		2	

TABLE 1—DEFECT TABLE—Continued

Defect description	Classification		
	Minor	Major	Serious
Excessive (over 4 instances)			2
6. Size of Fillets:			
Moderate (2 instances)		2	
Excessive (over 2 instances)			2
7. Texture:			
Slight	1		
Moderate		2	
Excessive			4

TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major defects	Serious defects	Group species [1]
U.S. Grade A:		
Up to 4 points	None	Groundfish.
Up to 5 points	do	Flatfish.
Up to 6 points	do	All others.
U.S. Grade B:		
Up to 8 points	do	Groundfish.
Up to 10 points	do	Flatfish.
Up to 12 points	do	All others.
U.S. Grade C:		
Up to 10 points	Up to 8 points	Groundfish.
Up to 12 points	do	Flatfish.
Up to 14 points	do	All others.

[1] Groundfish (white fish) includes cusk, ocean catfish, pollock, hake, whiting, and ling. Flatfish includes Greenland turbot and halibut.

(g) *Grade assignment:* Each sample unit will be assigned the grade into which it falls in accordance with the tolerance contained in Table 1 for Group Species. The grade to be assigned a lot is the grade indicated by the average of the total scores, provided the number of sample units in the next lower grade for both physical defects and flavor and odor does not exceed the acceptance number as indicated in the sampling plans contained in § 260.61.

[44 FR 32386, June 6, 1979, as amended at 51 FR 34990, Oct. 1, 1986]

Subpart B—United States Standards for Grades of Cod Fillets

§ 263.151 Product description.

The product described in this part consists of clean, whole, wholesome fillets or primarily large pieces of clean, whole, wholesome fillets, cut away from either side of cod, *Gadus morhua* or *Gadus macrocephalus*; the fillets may be either skinless or with skin on. They are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. (This part does not provide for the grading of pieces of fish flesh cut away from previously frozen fish blocks, slabs, or similar products.

§ 263.152 Grades of cod fillets.

(a) "U.S. Grade A" is the quality of cod fillets that possess good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of cod fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of cod fillets that fail to meet the requirements of U.S. Grade B.

§ 263.154 Product forms.

(a) Types:

(1) Fresh.

(2) Frozen, solid pack; glazed or unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on.

(2) Skinless.

§ 263.156 Recommended weights and dimensions.

(a) The recommendations as to net weights and dimensions of packaged cod fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weights of the packaged frozen cod fillets be not less than 12 ounces and not over 10 pounds.

§ 263.161 Ascertaining the grade.

The grade of cod fillets is ascertained by examining the product in the fresh or frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, absence of defects, and character. These factors are rated in the following manner:

(a) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 263.162).

(b) *Appearance, size, absence of defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	25
Size	20
Absence of defects	40
Character	15
Total possible score	100

§ 263.162 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of cod (Gadus morhua or Gadus macrocephalus) and is free from staleness, and off-flavor and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement of a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.163 Evaluation and rating of the scored factors; appearance, size, absence of defects, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 263.164 Appearance.

(a) The factor of appearance refers to the normal color of the species of fresh or frozen fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction points in Tables I and II apply. Frozen cod fillets which receive 25 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR DISCOLORATION

Color of product	Deduction points	
	"Light" colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
No discoloration	0	0
Slight yellowing	2	1

TABLE I—SCORE DEDUCTIONS FOR DISCOLORATION—Continued

Color of product	Deduction points	
	"Light colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
Moderate yellowing	4	2
Excessive yellowing and/or any rusting	13	12

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION

Degree of dehydration of frozen product	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep but just deep enough to easily scrape off with fingernail.	1	25	5
	25	50	8
	50	100	16
Excessive—Deep dehydration not easily scraped off.	1	25	12
	25	100	25

§ 263.165 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillet pieces. Any fillet piece weighing less than 2 ounces is classed as being undersirably small.

(b) For the purpose of rating the factor of size the schedule of deduction-points in Table III apply. Cod fillets which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE III—SCORE DEDUCTIONS FOR SIZE OF FILLET PIECES

Number of fillet pieces less than 2 ounces per pound		Deduction points
Over—	Not over—	
	0	0
0	1	1
1	2	10
2	3	15
3	4	20

§ 263.166 Workmanship defects.

(a) The factor of "workmanship defects" refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones. Evaluation for the defect of improper packing is made on the frozen product. Evaluation of the defects of cutting and trimming, blemishes, and bones are made on the thawed product.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into the frozen fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means an instance of skin (except for skin-on fillets), scales, blood-spot, bruise, black-belly lining, fin, or extraneous material. One "instance of skin" consists of one piece of skin not less than ½ square inch and not more than 1½ square inches in area; each additional ½ square inch area of individual skin pieces greater and 1½ square inches is considered as an additional instance. One "instance of blood spot" is one of such size and prominence as to be considered objectionable. One "instance of black-belly lining" is any piece of black-belly lining not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". Each aggregate area up to 1 square inch per fillet of one scale or group of scales is considered as one "instance of scales". An "instance of

bruise" consists of a bruise not less than ½ square inch and not more than 1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise.

(4) *Bones.* One "instance of bone" means one bone or one group of bones occupying or contacting a circular area up to 1 square inch.

(b) For the purpose of rating the factor of "absence of defects" the schedule of deduction-points in Table IV apply.

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Defects subfactors	Method of determining subfactor score	Deduction points
Improper packing	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of fish flesh:	
	Over 0 not over 1	1
	Over 1 not over 2	3
	Over 2 not over 3	5
	Over 3 not over 4	8
	Over 4 not over 5	12
	Over 5 not over 6	16
	Over 6 not over 7	30
	Over 7	40
Bones	Number of instances per 1 lb. of fish flesh:	
	Over 0 not over 1	0
	Over 1 not over 2	2
	Over 2 not over 3	4
	Over 3 not over 4	6
	Over 4 not over 5	8
	Over 5 not over 6	14
	Over 6 not over 7	30
	Over 7	40
Cutting and trimming	Slight defects, scarcely noticeable.	0
	Moderate defects, noticeable but not affecting the usability of any fillets.	4
	Excessive defects impairing:	
	(a) The usability of up to ¼ of the total number of fillets.	8
	(b) The usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The usability of over ½ of the total number of fillets.	40

[42 FR 52756, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 263.167 Character.

(a) The factor of character refers to the amount of free drip in the thawed fillets, and to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table V apply. Cod fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE V—SCORE DEDUCTIONS FOR CHARACTER

Character subfactors	Method of determining subfactor score	Deduction points
Texture	Texture of the cooked fish:	
	(a) Firm, slightly resilient but not tough or rubbery; moist but not mushy.	0
	(b) Moderately firm, only slightly tough or rubbery; does not form a fibrous mass in the mouth; moist but not mushy.	4
	(c) Moderately tough or rubbery; has noticeable tendency to form a fibrous mass in the mouth; or is dry; or is mushy.	8
	(d) Excessively tough or rubbery; has marked tendency to form a fibrous mass in the mouth; or is very dry; or is very mushy.	15
Drip	Percent of drip:	
	Over 0 not over 5	0
	Over 5 not over 6	1
	Over 6 not over 8	2
	Over 8 not over 10	4
	Over 10 not over 12	6
	Over 12 not over 14	9
	Over 14 not over 16	12
	Over 16	15

§ 263.171 Definitions and methods of analysis.

(a) *Percent of drip.* "Percent of drip" means the percent by weight of "free drip" (the fluid which is not reabsorbed by the fish tissue when the frozen fish thaws, and which separates freely without the aid of any external forces except gravity) in an individual package as determined by the following method:

(1) *Apparatus and materials.* (i) Water bath.

(ii) Balance, accurate to 0.1 gm; or 0.01 ounce.

(iii) Pliable and impermeable bag (cryovac, pliofilm, etc.).

(iv) Corrosion resistant metal rod weight (preferably stainless steel or monel metal), measuring 3½ inches in length and approximately ¼-½ inch in diameter.

(v) U.S. Standard No. 8 mesh circular sieve (both 8 and 12 inch diameters).

(vi) Stirring motor.

(vii) Identification tags.

(2) *Procedure.* (i) Place metal rod weight into an empty pliable bag.

(ii) Weigh the bag and the metal weight.

(iii) Remove the frozen fish material from the container (container consists of the carton and the inner and outer wrapping).

(iv) Place the frozen product, plus scraps of any material remaining in the container, into the pliable bag.

(v) Weigh the bag and its contents and subtract tare (empty bag and metal weight) to determine the net weight of the product.

(vi) Suspend the bag and contents in an agitated water bath maintained at 68° F. plus or minus 2° F. The bag should be suspended in the water so that the fish flesh is below the water line.

(vii) Allow the bag and its contents to remain immersed until the product is defrosted (a "test run", in advance, is necessary to determine time required for each product and quantity of product.)[1]

(viii) Remove bag and contents from bath and gently dry outside of bag.

(ix) Weigh dry U.S. Standard No. 8 mesh circular sieve.

(x) Open bag and empty contents onto U.S. Standard No. 8 circular sieve so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes.

(xi) Weigh sieve and its contents and calculate drained weight. The drained weight is the weight of sieve and fillets less the weight of the dry sieve.

(xii) Calculate percent drip:

Net weight (v) − drained weight (xi) × (100)/Net weight (v) = Percent of drip

(b) *Cooking in a suitable manner.* "Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch; fold the open end of the pouch over the suspension bar and clamp in place to provide a loose seal. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter. (Regulations Governing Processed Fishery Products.)

SCORE SHEET

§ 263.181 Score sheet for cod fillets.

Label
Size and kind of container
Container mark or identification
Size of lot
Number of packages per master carton
Size of sample
Type of overwrap
Actual net weight: ———(lb.) ———(kg.)

Factor	Score points	Sample score
Appearance	25	
Size	20	
Absence of defects	40	
Character	15	
Total	100	

Flavor and odor
Final grade

Subpart C—United States Standards for Grades of Flounder and Sole Fillets

§ 263.201 Description of the product.

Frozen flounder and sole fillets consist of clean, wholesome fillets processed and frozen in accordance with good commercial practice and maintained at temperatures necessary for their preservation. The fillets may be cut transversely or longitudinally into subunits.

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[1] The purpose of the "test run" is to determine the time necessary to thaw the product. The complete thawing of the product is determined by frequent but gentle squeezing of the bag until no hard core or ice crystals are felt. This package which has been squeezed cannot be used for drained weight calculations.

NOTE: This standard does not provide for the grading of units of fish flesh cut from previously frozen fish blocks, slabs, or similar material.

The product covered by this standard is prepared from the following species only:

SOLE

Dover sole (**Microstomus pacificus**).
English sole (**Parophrys vetulus**).
Gray sole (**Glyptocephalus cynoglossus**).
Petrale sole (**Eopsetta jordani**).
Lemon sole (**Pseudopleuronectes americanus, over 3½ pounds**).
Rock sole (**Lepidopsetta bilineata**).
Sand sole (**Psettichthys melanostictus**).

FLOUNDER

Blackback (**Pseudopleuronectes americanus, less than 3½ pounds**).
Yellowtail flounder (**Limanda ferruginea**).
Dab, plaice (**Hippoglossoides platessoides**).
Fluke (**Paralichthys dentatus**).
Starry flounder (**Platichtys stellatus**).

§ 263.202 Product forms.

(a) Types:

(1) Fresh,

(2) Frozen solid packs; glazed or unglazed,

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on,

(2) Skin on, white side only,

(3) Skinless.

§ 263.203 Grades of frozen flounder and sole fillets.

(a) "U.S. Grade A" is the quality of frozen flounder or sole fillets for which the total score is not less than 85 points, when the fillets are rated in accordance with the scoring system outlined in the following sections.

(b) "U.S. Grade B" is the quality of frozen flounder or sole fillets for which the total score is less than 85 points but is not less than 70 points, when the fillets are rated in accordance with the scoring system outlined in the following sections.

(c) "Substandard" is the quality of frozen flounder or sole fillets that fail to meet the requirements of the U.S. Grade B.

§ 263.211 Determination of the grade.

The grade is determined by observing the product in the frozen, thawed, and cooked states and is evaluated by numerical scoring. Points are deducted for variations of quality for each factor in accordance with the schedule in Table 1. The total of the points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER POUND OF FLOUNDER OR SOLE FILLETS AND GRADING SCORE SHEET

Scored factors	Description of quality variation	Deduct	Deductions
	FROZEN		
1. Appearance	Adversely affected by imbedded packaging material, voids, depressions, surface irregularity, and poor arrangements of fillets.		
	Slight	2	
	Moderate	4	
	Excessive	10	
2. Dehydration	For each inch square (determined by grid) of affected area:		
	Color masking, easily scraped off	½	
	Deep, not easily scraped off	1	
	THAWED		
3. Weights	(a) For each fillet or piece less than 1 oz., except first fillet or piece	5	
	(b) For sole only: For each fillet from 1–2 oz., except first fillet	2	
	For flounder only: For each fillet from 1–2 oz., except first three fillets	2	
4. Workmanship defects	For each inch square (determined by grid) of affected area:		
	(a) Cutting and trimming (ragged edges holes, tears, improper or unnecessary cuts and lace).	½	

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER POUND OF FLOUNDER OR SOLE FILLETS AND GRADING SCORE SHEET—Continued

Scored factors	Description of quality variation	Deduct	Deductions
	(b) Blemishes (belly lining, blood spots, bruises, extraneous material, fins, discolored pugh marks, scales and skin)	2	
	(c) Bones normally removed	3	
5. Color	(a) Deteriorative discoloration (yellowing of fatty portion and/or darkening of light portion)	3	
	Slight	2	
	Moderate	5	
	Excessive	15	
	(b) Nonuniformity of color (natural color differences within package due to packing fish of contrasting color):		
	Moderate	3	
	Excessive	5	
6. Abnormal condition	Usability and/or desirability of fillets impaired by abnormal conditions (jellied, milky, chalky):		
	Moderate	16	
	Excessive	31	
COOKED			
7. Texture	Tough, dry, fibrous, or watery for species involved:		
	Slight	4	
	Moderate	8	
	Excessive	15	
8. Odor and flavor	Very good: Full typical odor and flavor of fresh fish		
	Good: Noticeable decrease in typical odor and flavor of fresh fish	6	
	Reasonably good: Lacking typical odor and flavor of fresh fish, but not objectionable.	16	
	Substandard: Objectionable odor and/or flavor	31	

Total deductions
Score (100 minus total deductions)
Grade (100 to 85 = Grade A; 84 to 70 = Grade B; 69 and below = Substandard)

Label ....
Size of lot ....
Size of sample ....
Number of packages per master carton ....
Remarks ....
Actual net weight........lb........oz ....
Size and kind of container ....
Container mark or identification ....
Type of overwrap ....

§ 263.221 Definitions.

(a) "*Slight*" refers to a condition that is scarcely noticeable but that does affect the appearance, desirability, and/or eating quality of the fillets.

(b) "*Moderate*" refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, and/or eating quality of the fillets.

(c) "*Excessive*" refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability and/or eating quality of the fillets.

(d) "*Bones normally removed*" refers to (1) nape membrane bones (adjacent to visceral cavity) and to (2) radial bones (adjacent to fins and lace area).

(e) "*Determined by grid*" means that a transparent grid of 1-inch squares is placed over the defect area, and points are deducted (as specified in Table 1) for each square of affected area under the grid, each square being counted as one whether it is full or fractional.

(f) "*Thawed state*" means that the frozen product has been placed within a film-type pouch and warmed to an internal temperature of about 32° F by immersing the pouch in running tap water of about 50° to 70° F. Thawing time usually takes 25 to 45 minutes for a 1-pound package.

(g) "*Cooked state*" means that the thawed, unseasoned product has been placed within a boilable film-type pouch and heated to an internal temperature of about 160° F by immersing the pouch in boiling water. Cooking time usually ranges from 3 to 5 minutes for single fillets and from 7 to 10 minutes for 1-pound packages of fillets.

(h) "*Actual net weight*" means the weight of the fish flesh within the package after all packaging material, ice glaze, or other protective coating have been removed. ("Actual net weight" of frozen glazed fillets is determined as follows:

(1) Rapidly remove excessive ice layers or pockets with running tap water or nozzle-type water spray.

(2) Rapidly thaw remaining surfaces of frozen fish sufficiently with tap water or spray to prevent refreezing free surface water.

(3) Gently wipe off all free water with a moisture-saturated paper towel.

(4) Weigh the fish to obtain "actual net weight".)

(i) "*Abnormal condition*" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently altered so that the usability and/or desirability of the fillet is adversely affected. It includes, but is not limited to, the following examples:

(1) "*Jellied*" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a gelatinous glossy, translucent appearance, feels slimy to the touch, and retains its gelatinous, slimy properties in the cooked state.

(2) "*Milky*" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(3) "*Chalky*" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a dry, chalky granular appearance and fiberless structure.

(j) "*Odor and flavor*" is classified as follows:

(1) "*Very good*": Fish in this category have essentially the full, good, typical odor, and flavor of the indicated species.

(2) "*Good*": Fish in this category show a noticeable decrease of the good typical odor and flavor of the indicated species, and/or may have certain less acceptable natural environmental odors and flavors of slight intensity (iodoform-type, phenolic-type, feed-type, etc.), but may have no off odors and flavors.

(3) "*Reasonably good*": Fish in this category may be flat, or completely lacking in the good, typical odor and flavor of the indicated species, and/or may have certain less acceptable natural environmental odors and flavors of moderate intensity (iodoform-type, phenolic-type, feed-type, etc.), but may have no objectionable odors and flavors.

(4) "*Substandard*": Fish in this category have odors and flavors that are objectionable.

§ 263.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart D—United States Standards for Grades of Haddock Fillets

§ 263.251 Product description.

The product described in this part consists of clean, whole, wholesome fillets or primarily large pieces of clean, whole, wholesome fillets, cut away from either side of haddock, *Melanogrammus aeglefinus*; the fillets may be either skinless or with skin on. They are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. (This part does not provide for the grading of pieces of fish flesh cut away from previously frozen fish blocks, slabs, or similar products.)

§ 263.252 Grades of frozen haddock fillets.

(a) "U.S. Grade A" is the quality of haddock fillets that possess a good flavor and odor; and for those factors which are rated in accordance with the scoring system outlined in this part have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of haddock fillets that possess at least a reasonably good flavor and odor; and for those factors which are rated in accordance with the scoring system outlined in this part have a total score of not less than 70 points: *Provided*, That no factor receives maximum point score deduction.

(c) "Substandard" is the quality of haddock fillets that fail to meet the requirements of U.S. Grade B.

§ 263.254 Product forms.

(a) Types:

(1) Fresh,

(2) Frozen, solid pack; glazed or unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on,

(2) Skinless.

§ 263.256 Recommended weights and dimensions.

(a) The recommendations as to net weights and dimensions of packaged haddock fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weights of the packaged haddock fillets be not less than 12 ounces and not over 10 pounds.

§ 263.261 Ascertaining the grade.

The grade of haddock fillets is ascertained by observing the product in the frozen and thawed states and after representative sample units have been cooked in a suitable manner. The following factors are evaluated in ascertaining the grade of the product: Flavor, odor, appearance, size, defects, and character.

(a) These factors are rated in the following manner:

(1) *Flavor and odor*. These factors are rated by organolepic examination. Score points are not assessed (see § 263.262).

(2) *Appearance, size, defects, and character*. These factors are rated by score points expressed numerically on the scale of 100.

(b) The four factors and the maximum number of points that may be given each are as follows:

Factors	Points
Appearance	25
Size	20
Defects	40
Character	15
Total score	100

[42 FR 52756, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 263.262 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor*. "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of haddock (Melanogrammus aeglefinus); and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor*. "Reasonably good flavor and odor" (minimum requirement of a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.263 Ascertaining the rating for the factors which are scored; appearance, size, workmanship defects, and character.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The value for each factor is the maximum points allotted for the factor less the sum of the deduction-points within the factor.

§ 263.264 Appearance.

(a) General: The factor of appearance refers to the color of the fish flesh, and to the degree of surface dehydration of the product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Tables I and II apply. Haddock fillets which receive 25 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR COLOR SUBFACTOR

Color	Deduction points	
	"Light" colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
No discoloration	0	0
Slight yellowing	2	1
Moderate yellowing	4	2
Excessive yellowing and/or any rusting	13	12

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION SUBFACTOR

Degree of dehydration	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep but just deep enough to easily scrape off with fingernail	1	25	5
	25	50	8
	50	100	16
Excessive—Deep dehydration not easily scraped off	1	25	12
	25	100	25

§ 263.265 Size.

(a) General: The factor of size refers to the degree of freedom from undesirably small fillet pieces. Any piece weighing less than 2 ounces is classed undesirably small.

(b) For the purpose of rating the factor of size the schedule of deduction-points in Table III apply. Haddock fillets which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE III—SCORE DEDUCTIONS FOR SIZE OF FILLET PIECES

Number of fillet pieces less than 2 ounces per pound		Deduction points
Over—	Not over—	
	0	0
0	1	1
1	2	10
2	3	15
3	4	20

§ 263.266 Workmanship defects.

(a) General: The factor of workmanship defects refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means a piece of skin (except for skin-on fillets), scales, blood spot, a bruise, a black belly lining, a fin, or extraneous material. One "piece of skin" consists of one piece at least ½ square inch in area, except that any skin patches larger than 1½ square inches are each considered as two pieces of skin. "Blood spot" is one of such size and prominence as to be considered objectionable. "Black belly lining" is any piece longer than ½ inch. Each aggregate area up to 1 square inch of identifiable fin or parts of any fin is considered as one "instance of fin". Each aggregate area up to 1 square inch per fillet of one scale or group of scales is considered one "instance of scales". "A bruise" consists of an affected area of ½ square inch or more in area: except that any bruise larger than 1½ square inches is considered as two bruises.

(4) *Bones.* "Bones" means any bones that can be identified and are objectionable. One instance of bone means one bone or one group of bones occupying or contacting a circular area of 1 square inch.

(b) For the purpose of rating the factor of freedom from defects, the schedule of deduction-points in Table IV apply.

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Defects subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of fish flesh:	
	Over 0 not over 1	1
	Over 1 not over 2	3
	Over 2 not over 3	5
	Over 3 not over 4	8
	Over 4 not over 5	16
	Over 5 not over 6	30
	Over 6	40
Bones	Number of instances per lb. of fish flesh:	
	Over 0 nor over 1	0
	Over 1 not over 2	5
	Over 2 not over 3	10
	Over 3 not over 4	15
	Over 4 not over 5	30
	Over 5	40
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects, noticable but not affecting the useability of any fillets.	4
	Excessive defects impairing:	
	(a) The useability of up to ¼ of the total number of fillets.	8
	(b) The useability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The useability of over ½ of the total number of fillets.	40

§ 263.267 Character.

(a) General: The factor of character refers to the amount of drip in the thawed fillets, and to the tenderness and moistness of the properly cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table V apply. Haddock fillets which receive 15 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE V—SCORE DEDUCTIONS FOR CHARACTER

Character subfactors	Method of determining subfactor score	Deduction points
Texture	Texture of the cooked fish:	
	(a) Firm, slightly resilient but not tough or rubbery; moist but not mushy.	0
	(b) Moderately firm; only slightly tough or rubbery; does not form a fibrous mass in the mouth; moist but not mushy.	4
	(c) Moderately tough or rubbery; has noticeable tendency to form a fibrous mass in the mouth; or is dry; or is mushy.	8
	(d) Excessively tough or rubbery; has marked tendency to form a fibrous mass in the mouth; or is very dry; or is very mushy.	15
Amount of drip	Percent of drip:	
	Over 0 not over 5	0
	Over 5 not over 6	1
	Over 6 not over 8	2
	Over 8 not over 10	4
	Over 10 not over 12	6
	Over 12 not over 14	9
	Over 14 not over 16	12
	Over 16	15

§ 263.271 Definitions and methods of analysis.

(a) *Percent of drip.* "Percent of drip" means the percent by weight of "free drip" (the fluid which is not reabsorbed by the fish tissue when the frozen fish thaws, and which separates freely without the aid of any external forces except gravity) in an individual package as determined by the following method:

(1) *Apparatus and materials.* (i) Water bath.

(ii) Balance, accurate to 0.1 gm; or 0.01 ounce.

(iii) Pliable and impermeable bag (cryovac, pliofilm, etc.).

(iv) Vacuum source (Vacuum pump or water aspirator).

(v) U.S. Standard No. 8 mesh circular sieve (both 8 and 12 inch diameters).

(vi) Stirring motor.

(vii) Identification tags.

(2) *Procedure.* (i) Weight pliable and impermeable bag (cryovac, pliofilm, etc.).

(ii) Remove frozen material from container (container consists of the carton and the inner and outer wrappings).

(iii) Place frozen product, plus scraps of any material remaining on the container, into the pliable bag.

(iv) Weigh bag and contents and subtract tare to determine the net weight of the product.

(v) Evacuate air from bag by use of suction so that bag closely fits contour of product, with no air pockets.

(vi) Crimp the open end of bag and tie off (a secure and leakproof closure may be created by tying close to product and then folding excess bag and tying again).

(vii) Completely immerse bag and contents in a circulated water bath maintained at 68° F. plus or minus 2° F.

(viii) Allow to remain immersed until the product is defrosted (a "test run" in advance, is necessary to determine time required for each product and quantity of product).[1]

(ix) Remove bag and contents from bath and gently dry outside of bag.

(x) Weigh dry U.S. Standard No. 8 mesh circular sieve.

(xi) Open bag and empty contents onto U.S. Standard No. 8 circular sieve so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes.

(xii) Weigh sieve and its contents and calculate drained weight. The drained weight is the weight of the sieve and fillets less the weight of the dry sieve.

(xiii) Calculate percent drip:

Net weight (iv) $-$ drained weight (xii) $\times$ (100)/
Net weight $=$ Percent of drip

(b) *Cooking in a suitable manner.* "Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. The pouch and its contents are then immersed in boiling water and cooked until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.275 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter, (Regulations Governing Processed Fishery Products).

§ 263.281 Score sheet for haddock fillets.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Type of overwrap ....
Actual net weight————(lb.)————(kg.)...

Factor	Score points	Sample score
Appearance	25	....
Uniformity	20	....
Defects	40	....
Character	15	....
Total	10	....

Flavor and odor ....
Final grade ....

Subpart E—United States Standards for Grades of Ocean-Perch Fillets and Pacific Ocean-Perch Fillets

§ 263.301 Product description.

The product described in this part consists of: (a) Clean, whole, wholesome fillets, cut away from either side of the ocean perch, Sebastes marinus, which are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product; or (b) clean, whole, wholesome fillets, cut away from either side of the Pacific ocean perch, *Sebastes alutus*, which are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

[42 FR 52756, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

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[1] The purpose of the "test run" is to determine the time necessary to thaw the product. The complete thawing of the product is determined by frequent but gentle squeezing of the bag until no hard core of ice crystals are felt. This package which has been squeezed can not be used for drained weight calculations.

§ 263.302 Grades of ocean-perch fillets.

(a) "U.S. Grade A" is the quality of ocean-perch fillets that possess good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of ocean-perch fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of ocean-perch fillets that fail to meet the requirements of U.S. Grade B.

§ 263.304 Product forms.

(a) Types:

(1) Fresh.

(2) Frozen, solid pack; glazed or unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on.

(2) Skinless.

§ 263.306 Recommended weights and dimensions.

(a) The net weights and dimensions of packaged ocean-perch fillets and Pacific ocean-perch fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weight of the packaged ocean-perch fillets and Pacific ocean-perch fillets be not less than 12 ounces and not over 10 pounds and that the product be classified as large, medium, or small as classified by common commercial size classification practices.

§ 263.311 Ascertaining the grade.

The grade of ocean-perch fillets is ascertained by examining the product in the frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, workmanship defects, and character. These factors are rated in the following manner:

(a) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 263.312).

(b) *Appearance, size, workmanship defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	15
Size	20
Absence of defects	50
Character	15
Total possible score	100

§ 263.312 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of the species (either Sebastes marinus or Sebastes alutus) and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

[42 FR 52756, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 263.313 Evaluation and rating of the scored factors; appearance, size, absence of defect, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 263.314 Appearance.

(a) The factor of appearance refers to the color of the fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Table I apply. Frozen ocean-perch fillets which receive 15 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR APPEARANCE

Color of product	Deduction points
No discoloration	0
Slight yellowing	4
Moderate yellowing	9
Excessive yellowing and/or rusting	15

SCORE DEDUCTIONS FOR DEHYDRATION

Degree of dehydration of frozen product	Surface area affected (percent) Over—	Surface area affected (percent) Not over—	Deduction points
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep, but just deep enough to easily scrape with fingernail.	0	25	5
	25	50	10
	50	100	15
Excessive—Deep dehydration not easily scraped off.	0	10	10
	10	100	15

[42 FR 52756, Sept. 30, 1977, as amended at 51 FR 34990, Oct. 1, 1986]

§ 263.315 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillets.

(b) For the purpose of rating the factor of size, the schedule of deduction-points in Table II apply. Ocean-perch fillets which receive 20 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE II—SCORE DEDUCTIONS FOR SIZE OF FILLETS

[Deduction points]

Number of fillets per pound	Number of small fillets or pieces of fillets 0	1	2	3	4	5	6	7	8	9	10	11
	Under two ounces in weight											
2	0	5										
3	0	5	10									
4	0	4	7	10								
5	0	4	7	10	15							
6	0	3	6	9	15	20						
	Under one ounce in weight											
7	0	5	10	15	20	20	20					
8	0	5	10	15	20	20	20	20				
9	0	0	5	10	15	20	20	20	20			
10	0	0	5	10	15	20	20	20	20	20		
11	0	0	5	10	15	20	20	20	20	20	20	
12	0	0	4	7	10	15	15	20	20	20	20	20
13	0	0	0	4	7	10	15	15	15	20	20	20
14	0	0	0	1	4	7	10	15	15	15	20	20
15 or more	0	0	0	0	1	4	7	10	15	15	15	20

§ 263.316 Workmanship defects.

(a) The factor of "workmanship defects" refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones. Evaluation for the defect of improper packing is made on the frozen product. Evaluation of the defects of cutting and trimming, blemishes, and bones are made on the thawed product.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into the frozen fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means an instance of blood-spot, bruise, black-belly lining or membrane, fin, scales, or extraneous material. Blemish also means an instance of skin on skinned fillets. One "instance of blood spot" is one of such size and prominence as to be considered objectionable. An "instance of bruise" consists of a bruise not less than ½ square inch and not more than 1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise. An "instance of black-belly lining or membrane" is any piece of black-belly lining or membrane not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining or membrane longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". One "instance of scales" is an aggregate area of scales greater than ½ square inch per fillet. One "instance of skin" consists of one piece of skin at least ½ square inch in area; except that any skin patches larger than 1½ square inches are considered as two instances of skin.

(4) *Bones.* One "instance of bones" means an objectionable bone or group of bones occupying or contacting a circular area up to 1 square inch. An objectionable bone is any bone of such size and rigidity as to remain objectionable after cooking. Bones which will soften or disintegrate after cooking are not considered objectionable.

(b) For the purpose of rating the factor of absence of defects the schedule of deduction-points in Table III applies.

TABLE III—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Slight defects, not noticeably affecting the product's appearance.	0
	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 2	0
	Over 2 not over 4	2
	Over 4 not over 5	4
	Over 5 not over 6	7
	Over 6 not over 7	10
	Over 7 not over 8	15
	Over 8 not over 9	20
	Over 9 not over 10	30
	Over 10 not over 11	40
	Over 11	50
	Number of blemishes per 1 lb. of product when there are 7 to 12 (inclusive) fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 5	2
	Over 5 not over 6	4
	Over 6 not over 7	7
	Over 7 not over 8	10
	Over 8 not over 9	15
	Over 9 not over 10	20
	Over 10 not over 11	30
	Over 11 not over 12	40
	Over 12	50
	Number of blemishes per 1 lb. of product when there are 13 or more fillets per lb.:	
	Over 0 not over 6	0
	Over 6 not over 8	2
	Over 8 not over 9	4
	Over 9 not over 10	7
	Over 10 not over 11	10
	Over 11 not over 12	15
	Over 12 not over 13	20
	Over 13 not over 14	30
	Over 14 not over 15	40
	Over 15	50
Bones	Number of instances per lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 4	0
	Over 4 not over 5	1
	Over 5 not over 6	2
	Over 6 not over 7	5
	Over 7 not over 8	12
	Over 8 not over 9	20
	Over 9 not over 10	35
	Over 10	50
	Number of instances per lb. of product when there are 7 or more fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 4	1
	Over 4 not over 5	2
	Over 5 not over 6	5
	Over 6 not over 7	12
	Over 7 not over 8	20

TABLE III—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS—Continued

Subfactors	Method of determining subfactor score	Deduction points
	Over 8 not over 9	35
	Over 9	50
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects noticeable but not affecting the usability of any fillets.	4
	Excessive defects impairing:	
	(a) The usability of up to ¼ of the total number of fillets.	8
	(b) The usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The usability of over ½ of the total number of fillets.	40

§ 263.317 Character.

(a) *General.* The factor of character refers to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table IV apply. Ocean-perch fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE IV—SCORE DEDUCTIONS FOR CHARACTER

Texture of the cooked fish	Point deductions
1. Texture:	
(a) Firm, but tender and moist	0
(b) Slightly tough, dry, and/or fibrous, or mushy	4
(c) Moderately tough, rubbery, and/or fibrous	8
(d) Excessively tough, rubbery, and/or fibrous	15

§ 263.321 Cooking in a suitable manner.

"Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. Fold the pouch over a suspension bar and clamp it in place so that a loose seal is maintained. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.325 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter (Regulations Governing Processed Fishery Products).

§ 263.331 Score sheet for ocean-perch fillets.

Label ....

Size and kind of container ....

Container mark or identification ....

Size of lot ....

Number of packages per master carton ....

Size of sample ....

Type of overwrap ....

Actual net weight ——— (lb.) ——— (kg.) ....

Factor	Score points	Sample score
Appearance	15	....
Size	20	....
Absence of defects	50	....
Character	15	....
Total	100	....

Flavor and odor ....

Final grade ....

PART 264—UNITED STATES STANDARDS FOR GRADES OF FROZEN FISH BLOCKS AND PRODUCTS MADE THEREFROM

Subpart A—United States Standards for Grades of Frozen Fish Blocks

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264.102 Grades of frozen fish blocks.
264.111 Determination of the grade.
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264.351 Description of the product.
264.352 Composition of the product.
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264.401 Description of the product.
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264.421 Definitions.
264.422 Use of alternate methods for determining fish flesh content.
264.425 Tolerances for certification of officially drawn samples.

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SOURCE: 42 FR 52764, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Fish Blocks

§ 264.101 Description of the product.

Frozen fish blocks are rectangular-shaped masses of cohering frozen fish flesh of a single species. They consist of adequately drained whole, wholesome fillets or pieces of whole, wholesome fillets cut into small portions but not ground or comminuted; and they are frozen and maintained at temperatures necessary for the preservation of the product. Frozen fish blocks are made in two styles.

(a) *Style I—skinless fish blocks.* Fish blocks that have been made from skinless fillets.

(b) *Style II—skin-on fish blocks.* Fish blocks that have been made from demonstrably acceptable skin-on fillets.

§ 264.102 Grades of frozen fish blocks.

(a) "U.S. Grade A" is the quality of frozen fish blocks that (1) possess a good flavor and odor and that (2) have a total score of 85 to 100 points for those factors that are rated in accordance with the scoring system outlined in this part.

(b) "U.S. Grade B" is the quality of frozen fish blocks that (1) possess at least a reasonably good flavor and odor and that (2) have a total score of 70 to 84 points for those factors that are rated in accordance with the scoring system in this part.

(c) "Substandard" is the quality of frozen fish blocks that meet product description but fail to meet the requirements of U.S. Grade B.

§ 264.111 Determination of the grade.

The grade is determined by examining the product in the frozen, thawed, and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points* Points are deducted for variation in the quality of each factor in accordance with the schedule in table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with § 264.121.

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT

Factors scored	Aspects determining score	Deduct
	FROZEN STATE	
1 Color	Small degree: Moderate yellowing Large degree: Excessive yellowing and/or rusting	4 16
2 Dehydration	Minor: Moderate dehydration for each 10 percent of surface area affected. Major: Excessive dehydration for each 10 percent of surface area affected.	3 6
3 Uniformity of size	Minor: Each deviation from declared size in length, width, or thickness 1/8 to 1/4 inch. Major: Each deviation from declared size in length, width, or thickness over 1/4 inch.	3 6
4 Uniformity of weight	Minor: Any minus deviation from declared weight of more than 1 ounce but not more than 4 ounces. Major: Any minus deviation from declared weight more than 4 ounces	3 8
5 Angles	Edge angle—2 out of 3 readings deviating 3/16 inch Corner angle—each angle deviating 3/16 inch	2
6 Improper fill	For each 1 ounce unit cut from the block that would be adversely affected due to air spaces, ice spaces, depressions, ragged edges, damage, or imbedded packaging material.	1
	THAWED STATE	
7 Blemishes	Each blemish in 5 pounds of fish block	2
8 Bones	Each instance of bones in 5 pounds of fish block	5
	COOKED STATE	
9 Texture	Small degree: Moderately tough, dry, rubbery, or mushy Large degree: Excessively tough, dry, rubbery, or mushy	5 15

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.121 Definitions.

(a) *Examination of sample, frozen state.* (1) Color refers to reasonably uniform color characteristics of the species used. Deviations from normal color include noticeable yellowing and/or rusting of the fish surface.

(2) Dehydration refers to loss of moisture from the fish surfaces during frozen storage. Moderate dehydration is color-masking and can easily be scraped off with a fingernail. Excessive dehydration is deep color-masking and requires a knife or other hard instrument to scrape it off.

(3) Uniformity of size refers to the degree of conformity to the declared size. A deviation is considered to be any deviation from stated length, width, or thickness, or from the aver-

age dimensions if no dimensions are stated. Only one deviation from each dimension may be assessed. Two readings for length, three readings for width, and four readings for thickness will be measured.

(4) Uniformity of weight refers to the degree of conformity to the weight. Only underweight deviations are assessed.

(5) An acceptable edge angle is an angle formed by two adjoining surfaces whose apex is within ⅜ inch of a carpenter's square placed along the surfaces. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅛ inch of the apex of a carpenter's square placed on the edge surfaces. Unacceptable angles fail to meet these criteria.

(6) Improper fill refers to surface and internal air or ice voids, ragged edges, or damage. It is measured as the number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the 1-ounce unit is considered to be 4 × 1 × ⅝ inch.

(b) *Examination of the product, thawed state.* (1) Blemishes refer to a piece of skin, scale, a blood spot, a fin, a bruise, a black belly lining, a piece of nape membrane or a harmless piece of extraneous material. One "piece of skin" consists of one piece ½ square inch in area; except that for skin patches larger than 1 square inch, an additional instance shall be assessed for each additional ½ square inch in area. "Blood spot" is one of such size and degree as to be considered objectionable. A "piece of black belly lining" is any piece longer than ½ inch. "Fin" is one fin or one identifiable part of a fin. A piece of nape membrane consists of one piece ½ square inch in area or larger. "Scales" are aggregates of one or more scales of such degree as to be considered objectionable. Skin is not to be considered a blemish on Style II block. Blemishes are measured on a 5-pound portion cut from the edge of the fish block and thawed.

(2) "Bones" refers to any potentially harmful bones in the fish block. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate. One instance of bones means one bone or group of bones occupying or contacting a circular area of 1 square inch. Bones are measured on the same 5-pound thawed portion cut from the fish block.

(c) *Examination of the cooked product.* (1) Heating in a suitable manner means heating the product in one of two ways, as follows:

(i) Cut three or more portions about 4 by 3 by ½ inches from a frozen block. Wrap them individually or in a single layer in aluminum foil. Place the package portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions until the product is thoroughly heated, or

(ii) Cut and package the portions as previously described. Place the packaged portions on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven heated to 400° F. and remove when the product is thoroughly heated.

(2) Texture refers to the condition of the cooked fish flesh. The texture should be firm, slightly resilient, but not tough or rubbery; and should be moist, but not mushy. Deductions for texture will follow the deductions assessed in table 1.

(3) Flavor and odor are evaluated organoleptically as described in § 263.11(b).

(d) *General definitions.* (1) "Demonstrably acceptable" shall mean that the product has been produced commercially and met customer acceptance.

(2) "Adversely affected" shall mean that the unit cut would deviate more than 15 percent plus or minus from 1 ounce.

(3) "Small" (overall assessment) refers to a condition that is noticeable, but is not seriously objectionable.

(4) "Large" (overall assessment) refers to a condition that is not only

noticeable, but is seriously objectionable.

(5) "Minor" (measured quantity or area) refers to a defect that affects the appearance or utility of the product or both.

(6) "Major" (measured quantity or area) refers to a defect that seriously affects the appearance or utility of the product or both.

§ 264.125 Tolerances for certification of officially drawn samples.

The sample rates and grades of specific lots shall be certified on the basis of the regulations governing inspection and certification of processed fishery products, processed products thereof, and certain other processed food products.

Subpart B—United States Standards for Grades of Frozen Minced Fish Blocks

SOURCE: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 264.151 Scope and product description.

These standards shall apply to frozen minced fish blocks which are uniformly shaped masses of cohering minced fish flesh. A block may contain flesh from a single species or a mixture of species with or without food additives. The minced flesh consists entirely of mechanically separated fish flesh processed and maintained in accordance with good commerical practice. This minced flesh is made entirely from species which are known to be safe and suitable for human consumption.

§ 264.152 Product forms.

(a) *Types.* (1) Unmodified—No food additives used.

(i) Single species.

(ii) Mixed species.

(2) Modified—Contains food additives (see § 264.155).

(i) Single species.

(ii) Mixed species.

(b) *Color classifications.* (1) White.

(2) Light.

(3) Dark.

See Appendix 1, § 264.157 for definition and method of measurement.

(c) *Texture.* (1) Coarse—Flesh has a fibrous consistency.

(2) Fine—Flesh has a partially fibrous consistency because it is a mixture of small fibers and paste.

(3) Paste/Puree—Flesh has no fibrous consistency.

§ 264.153 Grades—quality factors.

(a) *U.S. Grade A.* Minced fish blocks shall:

(1) Possess good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade A quality in accordance with § 264.154.

(b) *U.S. Grade B.* Minced fish blocks shall:

(1) Possess reasonably good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade B quality in accordance with § 264.154.

(c) *U.S. Grade C.* Minced fish blocks shall:

(1) Possess minimally acceptable flavor and odor with no objectional off-flavors or off-odors, and

(2) Comply with the limits of defects for U.S. Grade C quality in accordance with § 264.154.

§ 264.154 Determination of grade.

(a) *Procedures for grade determination.* The grade shall be determined by:

(1) Sampling in accordance with the sampling plan described in paragraph (b) of this section; (2) evaluating odor and flavor in accordance with paragraph (c) of this section; (3) examining for defects in accordance with paragraphs (d) and (e) of this section; and (4) using the results to assign a grade as described in paragraph (f) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections shall be in accordance with the sampling plans contained in Part 260 of this chapter. For examination in the frozen state, an entire block shall be used as a sample unit. For examination in the thawed state, a subsample of at least 5 pounds weight shall be used.

(c) *Evaluation of flavor and odor.* Evaluation of flavor and odor shall take place after the sample has been cooked by any of the procedures given below. These procedures are based on heating sample to internal temperature of at least 160° F (70° C), but without overcooking. Cooking times vary according to size of sample and the equipment used. If determining cooking time, cook extra sample using a temperature measuring device to determine internal temperature.

(1) Bake procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and distribute evenly on flat cookie sheet or shallow flat pan. Heat in ventilated oven, preheated to 400° F (204° C), until internal temperature reaches at least 160° F (70° C).

(2) Steam procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and place on wire rack suspended over boiling water in a covered container. Heat until internal temperature of sample reaches at least 160° F (70° C).

(d) *Examination for physical defects.* The sample unit will be examined for defects using the list of defects definitions in § 264.154(e), and the defects noted and categorized as minor, major, and serious, in accordance with Table 1 of this part.

(e) *Definitions of defects*—(1) *Deteriorative color* refers to discoloration from the normal characteristics of the material used. Deterioration can be due to yellowing of fatty material, to browning of blood pigments, or other changes.

(i) Slight deteriorative discoloration—refers to a color defect that is slightly noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(ii) Moderate deteriorative discoloration—refers to a color defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(iii) Excessive deteriorative discoloration—refers to a defect that is conspicuously noticeable and that seriously affects the appearance, desirability, or eating quality of the product.

(2) *Dehydration* refers to a loss of moisture from the surfaces of the product during frozen storage.

(i) Slight dehydration—is surface color masking, affecting more than 5 percent of the area, which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 5 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 5 percent of the area, and requiring a knife or other sharp instruments to remove.

(3) *Uniformity of size* refers to the degree of conformity to the declared contracted dimensions of the blocks. A deviation is considered to be any deviation from the contracted length, width, or thickness; or from the average dimensions of the blocks, physically determined, if no dimensions are contracted. Only one deviation from each dimension may be assessed. Two readings for length, three readings for width, and four readings for thickness will be measured.

(i) Slight—two or more deviations from declared or average length, width, and thickness up to ±⅛ inch.

(ii) Moderate—two or more deviations from declared or average length, width, and thickness from ±⅛ inch to ±⅜ inch.

(iii) Excessive—two or more deviations from declared or average length, width, and thickness over ±⅜ inch.

(4) *Uniformity of weight* refers to the degree of conformity to the declared weight. Only underweight deviations are assesssed.

(i) Slight—any minus deviation of not more than 2 ounces.

(ii) Excessive—any minus deviation over 2 ounces.

(5) *Angles.* An acceptable edge angle is an angle formed by two adjoining surfaces of the fish block whose apex is within ⅜ inch of a carpenter's square placed along the surfaces of the block. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅜ inch of the apex of a carpenter's square placed on the edge surfaces. Any edge or corner angle

which fails to meet these measurements is unacceptable.

(i) Slight—two unacceptable angles.

(ii) Moderate—three unacceptable angles.

(iii) Excessive—four or more unacceptable angles.

(6) *Improper fill* refers to surface and internal air or ice voids, ragged edges, or damage. Improper fill is measured as the minimum number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the dimensions of a 1-ounce unit are 4×1×⅝ inch.

(i) Slight—1 to 3 units adversely affected.

(ii) Excessive—over 3 units adversely affected.

(7) *Blemishes* refer to pieces of skin, scales, blood spots, nape (belly) membranes (regardless of color), or other harmless extraneous material. One instance means that the area occupied by a blemish or blemishes is equal to a ¼ inch square. Instances are prorated on a per pound basis.

(i) Slight—5 to 15 instances per pound.

(ii) Moderate—more than 15 but less than 30 instances per pound.

(iii) Excessive—30 or more instances per pound.

(8) *Bones* refer to any objectionable bone or piece of bone that is ¼ inch or longer and is sharp and rigid. Perceptible bones shall also be checked by their grittiness during the normal evaluation of the texture of the cooked product (10). Bones are prorated on a five pound sample unit basis.

(i) Slight—1 to 2 bones per five pound sample unit.

(ii) Moderate—3 to 4 bones per five pound sample unit.

(iii) Excessive—over 4 bones, but not to exceed 10 bones, per five pound sample unit.

(9) *Flavor and odor* are evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with § 264.154 (c).

(i) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the flavor and odor characteristic of the indicated species of fish and is free from staleness, bitterness, rancidity, and off-flavors and off-odors of any kind.

(ii) Reasonably good flavor and odor (minimum requirements of Grade B product) means that the cooked product is moderately absent of flavor and odor characteristic of the indicated species, the product is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(iii) Minimal acceptable flavor and odor (minimum requirements of a Grade C product) means that the cooked product has moderate storage-induced flavor and odor, but is free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

(10) *Texture defects* are judged on a sample of the cooked fish.

(i) Slight—flesh is fairly firm, only slightly spongy or rubbery. It is not mushy. There is no grittiness due to bone fragments.

(ii) Moderate—flesh is mildly spongy or rubbery. Slight grittiness may be present due to bone fragments.

(iii) Excessive—flesh is definitely spongy, rubbery, very dry, or very mushy. Moderate grittiness may be present due to bone fragments.

(f) *Grade assignment.* The sample unit shall be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

	Flavor and odor	Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	0
Grade B	Reasonably good	5	1	0
Grade C	Minimal acceptable	7	3	1

Each lot of minced blocks shall be assigned that grade which corresponds to the acceptance number for deviants prescribed in Tables II, V, or VI of 50 CFR 260.61.

§ 264.155 Additives

Minced fish blocks may be modified with food additives as necessary to stabilize product quality in accordance with the requirements of the regulations contained in 21 CFR Part 171.

§ 264.156 Hygiene

The fish material shall be processed and maintained in accordance with the requirements of 50 CFR § 260.98 to 260.104 and the requirements of good manufacturing practice contained in 21 CFR Part 110.

TABLE 1

Physical defects		Categories		
Types	Degrees	Minor	Major	Serious
Frozen State:				
Deteriorative color	Slight	101		
	Moderate		201	
	Excessive			301
Dehydration	Slight	102		
	Moderate		202	
	Excessive			302
Uniformity of size	Slight	103		
	Moderate		203	
	Excessive			303
Uniformity of weight	Slight	104		
	Excessive			304
Unacceptable angles	Slight	105		
	Moderate		205	
	Excessive			305
Improper fill	Slight	106		
	Excessive			306
Thawed State:				
Blemishes	Slight	107		
	Moderate		207	
	Excessive			307
Bones	Slight	108		
	Moderate		208	
	Excessive			308
Cooked State: Texture	Slight	109		
	Moderate		209	
	Excessive			309

NOTE: The code numbers shown in the above Table are for identification of defects for recording purposes only. They are keyed to the nature and severity of the defect. They are not scores.

[44 FR 32368, June 6, 1979, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.157 Appendix 1. Definition and method of measuring color classifications.

Section 264.157 Appendix 1. Definition and procedure of measuring color classifications cited in § 264.152(b). This appendix is intended for laboratory use to classify color when a field procedure is questioned.

Introduction. The procedure described below is to be followed when a photoelectric or visual reflectometer is used. The light source and filters for a photoelectric or visual reflectometer are designed to view a sample primarily in the red region of the spectrum, at or near 640 nanometers. The geometry of its illumination and observation conditions provide directions approximately 45 degrees and 0 degrees from a common perpendicular. The viewing area is, preferably, approximately six square inches or 39 square centimeters. Reflectometers having much smaller viewing areas may be used if enough measurements are made on different areas of the sample to describe its average reflectance accurately. The receptor characteristics provide reflectance measurements that are accurate to within 1 percent of full-scale reading using Munsell neutral value standards as described below.

This description of a reflectometer is intended to avoid undue restrictions to equipment provided by one, or a very few, manufacturers. In the majority of situations, a variety of reflectometers will be suitable for color classification of samples from minced fish blocks. In the event of a borderline sample whose color classification is disputed, the sample is measured again using a different, more accurate, reflectometer. For example, if a visual reflectometer had been used to classify a disputed sample, a more accurate photoelectric reflectometer should be used for the remeasurement.

Sample preparation. The color of the sample must represent the average color of the block when it is cut from that block. At least one of its sides must be large enough and flat enough to completely cover the reflectometer's viewing area. The sample must be cooked from the frozen state by the bake procedure or, if previously coated with batter and breading, by the deep fat frying procedure, 18.B01 in "Official Methods of Analysis" 2nd supplement to the 12th edition, of the Association of Official Analytical Chemists. If the sample is covered with batter and breading for cooking, this cover should be removed with a sharp serrated knife so that the viewing area surface remains flat. The cooked sample must also be thick enough to prevent transmission of external, ambient light into the viewing area of the reflectometer.

Measurement of color. The reflectometer itself is described above at "Introduction." It may be calibrated and used with neutral value standards furnished by the manufacturer of a reflectometer or with Munsell matte-finish neutral value standards. When other standards are used, they must have been calibrated against Munsell matte-finish neutral value standards using the same reflectometer. All standards must be large enough and thick enough to cover the reflectometer's viewing area and prevent transmission of external ambient light into this viewing area.

Munsell neutral value standards are based on the Munsell notation system as defined in terms of the CIE (International Commission on Illumination) standard observer and coordinate system for color specification. Chip or swatch samples of Munsell standards may be obtained from Munsell Color, Inc., Baltimore, Md. 21218, or made as given by the relationship between Munsell value and luminous reflectance derived by a subcommittee of the Optical Society of America and Published in the "Journal of the Optical Society of America," volume 33, page 406 (1943). This relationship is based on the equivalence in luminous reflectance of light of 555 nanometer wave length to a given percent of the luminous reflectance of magnesium oxide. For the Munsell values used in this section, this relationship has been extracted from page 406 of this reference and is given in the following table, where "N" is the Munsell value and "Yv" is the equivalent luminous reflectance of the stated percent of magnesium oxide:

N	Yv
N2.00	3.13
N6.00	30.05
N6.25	33.04
N6.50	36.20
N7.00	43.06
N7.25	46.77
N7.50	50.68
N9.00	78.66

Definition of "white" samples. Calibrate the reflectometer to 0-percent reflectance using a N2.0 standard, then to 90 percent using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "white" blocks have a relative reflectance greater than a N7.25 standard; but if a particular sample has a relative reflectance between N7.0 and N7.5 standards, its reflectance is measured again using an expanded scale before defining it as "white." Recalibrate the reflectometer using a N7.0 standard to set 0-percent reflectance and a N7.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "white" sample is defined as having a greater relative reflectance than a N7.25 standard.

Definition of "dark" samples. Calibrate the reflectometer to a 0-percent reflectance using a N2.0 standard, then to 90 percent reflectance using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "dark" blocks have a relative reflectance less than a N6.25 standard; but if a particular sample has a relative reflectance between N6.0 and N6.5 standards, its reflectance is measured again using an expanded scale before defining it as "dark." Recalibrate the reflectometer using a N6.0 standard to set 0-percent reflectance and a N6.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "dark" sample is defined as having a lower relative reflectance than a N6.25 standard.

Definition of "light" samples. If a sample does not satisfy the criteria given above for "white" or "dark" samples, it is classified as "light.'

Subpart C—United States Standards for Grades of Frozen Raw Fish Portions

§ 264.201 Description of the product.

The product described in this part consists of clean, wholesome, shaped masses of cohering pieces (not ground) of fish flesh. The fish portions are cut from frozen fish blocks, and are packaged in accordance with good manufacturing practice. They are maintained at temperatures necessary for the preservation of the product. All fish portions in an individual package are prepared from the flesh of one species of fish.

§ 264.202 Styles.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless fillets.

(b) *Style II—Skin-on portions.* Portions prepared from fish blocks which have been made from demonstrably acceptable skin-on fillets.

§ 264.203 Types.

(a) *Type I—Uniform shaped.* All portions in the sample are uniformly shaped.

(b) *Type II—Specialty cut.* All portions not covered in Type I.

§ 264.204 Grades.

(a) "U.S. Grade A" is the quality of frozen raw fish portions that: (1) Possess a good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw fish portions that: (1) Possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen raw fish portions that meet the requirements of § 264.201 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.205 Labeling requirements for styles of frozen fish portions.

Sections 260.86 (a), (b), and (c) of this chapter state the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 264.202) of frozen raw fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on fillets."

§ 264.211 Determination of the grade.

The grade is determined by examining the product for factors 1-8 in the frozen state and factors 9-11 in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table I. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 264.221(c).

(1) Good flavor and odor (essential requirements for U.S. Grade A product) means that the cooked product has the typical flavor and odor of the indicated species and is free from rancidity, bitterness, staleness, and other off-flavor and odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S. Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

§ 264.221 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of 10 frozen raw fish portions taken at random from one or more packages as required. The fish portions for examination in the frozen and cooked state are spread out on a flat pan or sheet and are examined according to Table 1. Definition of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* (1) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(2) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(3) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is determined by using a grid composed of squares ¼ inch × ¼ inch to measure the area of the portion affected. No deductions are made for damage of less than ¼ inch × ¼ inch.

(4) "Voids" refer to objectionable holes, spaces, or depressions in the fish flesh. Instances of voids refer to each occurrence measured by placing a plastic grid marked off in ¼-inch squares at least ⅛ inch in depth over the affected area. Each square is counted as one whether it is full or fractional. No deductions are made for voids of less than ¼ inch × ¼ inch.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Ease of separation	Minor: Hand separated with difficulty. Each affected	3
	Major: Separated only by knife or other instrument. Each affected	6
2 Broken portion	Break or cut greater than ½ width or length. Each affected	10
3 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated	
	Minor: 1 to 5 instances.[1] Each affected	2
	Major: Over 5 instances. Each affected	4
4 Voids	Holes, spaces, or depressions:	
	Minor: 1 to 5 instances. Each affected	1
	Major: Over 5 instances. Each affected	2
5 Discoloration (overall assessment)	Small degree: Slight yellowing or rusting	16
	Large degree: Excessive yellowing or rusting	31
6 Dehydration (overall assessment)	Surface dehydration:	
	Small degree: Easily scraped off with fingernail. Each affected	5
	Large degree: Deep dehydration not easily scraped off, affecting over 10 percent of surface area. Each affected	10
7 Uniformity of size	Deviation in length or width between the 2 largest and 2 smallest portions that are similarly shaped	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
8 Uniformity of weight	Weight ratio of 2 heaviest divided by the 2 lightest	
	Over 1.0 but not over 1.2	0
	Over 1.2 but not over 1.3	2
	Over 1.3 but not over 1.4	5
	Over 1.4	10

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE—Continued

Factors scored	Method of determining score	Deduct
	COOKED STATE	
9 Blemishes	Skin (except for Style II) blood spots, bruises and discolorations.	
	Minor: 1 to 6 instances.[1] Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Portions containing bones (potentially harmful). Each affected	10
11 Texture (overall assessment)	Small degree: Moderately dry, soggy, or tough	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery skin (Style II).	15

[1] An instance = each ¼-inch square.

(5) "Discoloration" is considered as a deviation in color from that normal to the species present in the portions.

(6) "Dehydration" refers to the presence of dehydrated (water-removed) tissue in the portions. Slight dehydration is surface dehydration which is not colormasking. Deep dehydration is colormasking and cannot be removed by scraping with a blunt instrument.

(7) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest in the sample. Deductions are not made for overall deviations in length or width up to ¼ inch.

(8) "Uniformity of weight" refers to the degree of uniformity of the weights of portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2 for Type I.

(c) *Examination of sample, cooked state.* Cooked state means the state of the sample after cooking in accordance with instructions accompanying the product. However, if specific instructions are lacking, cooking is accomplished by:

(1) *Boil in bag method.* Insert the sample of frozen portions into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the portions reaches 160° F.).

(2) *Steam method.* Use 10 frozen portions, wrap them individually or in a single layer in aluminum foil, and place the packaged portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions for 20 minutes.

(3) *Bake method.* Package the 10 frozen portions as previously described. Place the packaged portions on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F. for 20 minutes.

(d) *Factors examined in cooked state.* (1) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(2) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(3) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness,

mushiness, toughness, and rubberiness. Texture defects of the cooked skin in Style II are mushiness, rubberiness, toughness, and stringiness.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight": The net weight of the portions if glazed shall be determined by the following method:

(i) Weigh the portions with the glaze intact, which gives the gross weight.

(ii) Thaw the glaze from the surfaces of the product with flowing tap water.

(iii) Gently wipe off the excess water from the surfaces with a single water saturated paper towel.

(iv) Weigh the deglazed portions, which gives the net weight.

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

Subpart D—United States Standards for Grades of Frozen Raw Breaded Fish Sticks

§ 264.251 Description of the product.

Frozen raw breaded sticks are clean, wholesome, rectangular-shaped unglazed masses of cohering pieces (not ground) of fish flesh coated with breading. The sticks are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; are packaged, and frozen in accordance with good commercial practice. They are maintained at temperatures necessary for preservation of the product. Frozen raw breaded fish sticks weigh up to and including 1½ ounces; are at least ⅜ inch thick; and their largest dimension is at least 3 times the next largest dimension. All sticks in an individual package are prepared from the flesh of one species of fish.

§ 264.252 Composition of the product.

(a) Frozen raw breaded fish sticks shall contain 72 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.271(f). Fish flesh content may be determined by the on-line method as set forth in § 264.271(g): *Provided,* That the results are consistent with the fish flesh content requirement of 72 percent by weight when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.253 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded fish sticks that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen raw breaded fish sticks that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw breaded sticks that meet the requirements of § 264.251 *Description of product,* but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.261 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling, and tasting, after the product has been cooked in accordance with § 264.271(c)

(1) Good flavor and order (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 264.271 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen raw breaded fish sticks taken at random from one or more packages as required. The fish sticks are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Moderate loose breading and/or moderate frost	2
	Large degree: Excessive loose breading and/or excessive amount frost	5
2 Ease of separation	Minor: Hand separated with difficulty. Each affected	1
	Major: Separated only by knife or other instrument. Each affected	2
3 Broken stick	Break or cut greater than ½ length width. Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or mutilated [1]	
4 Damaged stick	Minor: 1 to 3 instances. Each affected	2
	Major: Over 3 instances. Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest sticks is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest sticks:	
	Over 1.0; not over 1.15	0
	Over 1.15; not over 1.3	2
	Over 1.3; not over 1.4	5
	Over 1.4	10
	COOKED STATE	
7 Distortion	Minor: Bending, shrinking, twisting (¼ to ½ inch). Each affected	1
	Major: Excessive bending, shrinking, twisting (over ½ inch). Each affected.	2
	Bare spots, blistering, ridges, breaks, curds	
8 Coating defects	Minor: 1 to 3 instances. Each affected	1
	Major: Over 3 instances. Each affected	2
	Skin, blood spots, bruises, discolorations [1]	
9 Blemishes	Minor: 1 to 6 instances. Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Sticks containing bones (potentially harmful). Each affected	10
Texture		
11 Coating	Small degree: Moderately dry, soggy, doughy or tough	5
	Large degree: Farinaceous (mealy), pasty, very tough	15

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS—Continued

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
12 Fish flesh	Small degree: Moderatley dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy tough or rubbery.	15

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[1] An instance = each 1/16 square inch (1/4-inch square).

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating sticks from each other or from packaging material that are frozen together during the freezing.

(3) "Broken stick" means a stick with a break or cut equal to or greater than one-half the width of the stick.

(4) "Damaged stick" means a stick that has been mashed, physically or mechanically injured, misshaped, or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares 1/4 inch (that is, squares with an area of 1/16 square inch each) to measure the area of the stick affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen sticks. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length or width up to 1/4 inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the sticks. Uniformity is measured by the combined weight of the two heaviest sticks divided by the combined weight of the two lightest sticks. No deductions are made for weight ratios less than 1.15.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, into a wire mesh fry basket large enough to hold the fish sticks in a single layer and cook by immersing 2-3 minutes in 375° F. liquid or hydrogenated cooking oil. After cooking, allow the fish sticks to drain 15 seconds and place the fish sticks on a paper napkin or towel to absorb excess oil.

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the stick. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than 1/4 inch.

(2) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters, or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the stick surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated albumin. Instances of these defects are measured by a plastic grid marked off in 1/4-inch squares (1/16 square inch). Each square is counted as 1 whether it is full or fractional.

(3) "Blemishes" refers to skin, blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid market off in 1/4-inch squares (1/16 square inch) over the defect area.

Each square is counted as 1 whether it is full or fractional.

(4) "Bones" means the presence of potentially harmful bones in a stick. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(5) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastiness as sensed by starchiness or other sticky properties felt by mouth tissues and/or mealiness.

(6) "Texture defects of the fish flesh" refers to the absence of the normal textural properties of the cooked fish flesh which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, mushiness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—End-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen raw breaded fish sticks (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen raw breaded fish sticks by dividing the declared net weight on the label by the number of fish sticks indicated on the label to obtain the weight of an individual fish stick and multiply by three. If the number of fish sticks contained in the package is not declared on the label, the actual weight of three frozen raw breaded fish sticks shall be used.

(ii) Using tongs, place each stick individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for sticks held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish stick from the water and blot the stick lightly with double thickness paper toweling. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the stick on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some sticks prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" stick in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish sticks.

(vii) Calculate the percent of fish flesh in the sample unit by the following formula:

Percent fish flesh=Weight of fish flesh (vi)x100/Weight of three breaded fish sticks (i)

Example. The declared net weight of five 1 oz. breaded fish sticks would be 5 ounces. The average weight of three groups of five unbreaded fish sticks would be 3.6 ounces. The percent fish flesh would be 72.

Percent fish flesh = Weight of fish flesh (sample unit) (i) × 100/Declared net weight of raw breaded fish sticks × 5(ii)

(g) "Minimum fish flesh content—Online determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish sticks (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—Balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded fish sticks from the line. These weights should be recorded and averaged (average weight of three groups of five sticks) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish sticks and the declared net weight of five breaded fish sticks.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 times (three groups of five unbreaded fish sticks). For larger production runs or lots, a minimum of 1 determination i.e., 1 times (three groups of five unbreaded fish sticks), shall be carried out for every hour of production of product units of the same weight.

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.272 Use of alternate methods of fish flesh determination.

(a) The end-product method in § 264.271(f) for determining fish flesh content shall be used for lot and appeal inspections and may be used for verification inspection.

(b) The on-line method in § 264.271(g) for determining fish flesh content may be used during processing operations.

§ 264.275 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart E—United States Standards for Grades of Frozen Raw Breaded Fish Portions

§ 264.301 Description of the product.

Frozen raw breaded portions are clean, wholesome, uniformly shaped, unglazed masses of cohering pieces (not ground) of fish flesh coated with breading. The portions are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; and are packaged and frozen in accordance with good commercial practice. They are maintained at temperatures necessary for the preservation of the product. Frozen raw breaded fish portions weigh more than 1½ ounces, and are at least ⅜-inch thick. Frozen raw breaded fish portions contain not less than 75 percent, by weight, of fish flesh. All portions in an individual package are prepared from the flesh of one species of fish.

§ 264.302 Styles.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless fillets.

(b) *Style II—Skin-on-portions.* Portions prepared from fish blocks which have been made with demonstrably acceptable skin-on fillets.

§ 264.303 Composition of the product.

(a) Frozen raw breaded fish portions shall contain 75 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.321(f). Fish flesh content may be determined by the on-line method as set forth in § 264.321(g): *Provided,* That the results are consistent with the fish flesh content requirement of 75 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.304 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded fish portions that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(b) "U.S. Grade B" is the quality of frozen raw breaded fish portions that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw breaded portions that meet the requirements of § 264.301, *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B".

§ 264.305 Labeling requirements for styles of frozen raw breaded fish portions.

Section 260.86 (a), (b), and (c) of Part 260 states the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 264.302) of frozen raw breaded fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on-fillets".

§ 264.311 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated in accordance with the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting, after the product has been cooked in accordance with § 264.321(c).

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 264.321 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen raw breaded fish portions taken at random from one or more packages as required. The fish portions are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Moderate loose breading and/or moderate frost	3
	Large degree: Excessive loose breading and/or excessive amount frost	6
2 Ease of separation	Minor: Hand separated with difficulty. Each affected	1
	Major: Separated only by knife or other instrument. Each affected	2
3 Broken portion	Break or cut greater than ½ width or length. Each affected	10
4 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated:[1]	
	Minor: 1 to 5 instances. Each affected	2
	Major: Over 5 instances. Each affected	4

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS—Continued

Factors scored	Method of determining score	Deduct
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest portion is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest portions:	
	Over 1.2 but not over 1.3	2
	Over 1.3 but not over 1.4	5
	Over 1.4	10
COOKED STATE		
7 Distortion	Minor: Bending, shrinking, testing—¼ to ½ inch. Each affected	1
	Major: Excessive bending, shrinking, twisting—over ½ inch. Each affected	2
8 Coating defects	Bare spots, blistering, ridges, breaks, curds:[1]	
	Minor: 1 to 6 instances. Each affected	1
	Major: Over 6 instances. Each affected	2
9 Blemishes	Skin (except for style II), blood spots, bruises, and discolorations:[1]	
	Minor: 1 to 6 instances. Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Portions containing bones (potentially harmful). Each affected	10
Texture		
11 Coating	Small degree: Moderately dry, soggy, doughy, or tough	5
	Large degree: Farinaceous (mealy), pasty, very tough	15
12 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery (skin for style II)	15

[1] An instance = each $1/16$ square inch (¼-inch square).

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(3) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(4) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped, or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼-inch x ¼-inch (that is, squares with an area of $1/16$ square inch each) to measure the area of the portion affected. No deductions are made for damage of less than $1/16$ square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest portions in the sample. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to, the degree of uniformity of the weights of the portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2.

(c)(1) Cooked state means the state of the product after being cooked in accordance with the instructions accompanying the product. If, however, specific instructions are lacking, the product being inspected is cooked as follows:

(2) Transfer the product, while still frozen, into a wire mesh fry basket large enough to hold the fish portions in a single layer and cook by immersing them 3-5 minutes in liquid or hydrogenated cooking oil heated to 350° to 375° F. After cooking, allow the fish portions to drain 15 seconds and place them on a paper napkin or towel to absorb excess oil.

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the portion. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the portion surface. Ridges are projections of excess breading at the edges of the portions. Depressions are objectionable visible voids or shallow areas that are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated white or creamy albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (¹⁄₁₆ square inch). Each square is counted as 1 whether it is full or fractional.

(3) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (¹⁄₁₆ square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(4) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(5) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Defects in coating texture are dryness, sogginess, mushiness, doughyness, tougnness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues and/or mealiness.

(6) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness, mushiness, toughness, and rubberyness. Texture defects of the cooked skin in Style II are mushiness, rubberyness, toughness, and stringiness.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—End-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen raw breaded portions (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3 to 4 liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen raw breaded portions by dividing the declared net weight on the label by the number of portions indicated on the label to obtain the weight of an individual portion and multiply by three. If the number of portions contained in the package is not declared on the label, the actual weight of three frozen raw breaded portions shall be used.

(ii) Using tongs, place each portion individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for portions held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish portion from the water and blot the portion lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the portion on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some portions prepared using batters that are difficult to remove after one dipping. When this occurs, redip the partially "debreaded" portion in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish portions.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

Percent fish flesh = Weight of fish flesh (vi)x100/Weight of three raw breaded portions (i)

(g) "Minimum fish flesh content—On-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five portions (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—Balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded portions from the line. These weights should be recorded and averaged (average weight of three groups of five portions) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded portions and the declared net weight of five finished product units.

Example. The declared net weight of five 4 oz. finished product units would be 20 ounces or 565 grams. The average weight of three groups of five unbreaded portions would be 13 ounces or 424 grams. The percent fish flesh would be 75.

Percent fish flesh = Weight of fish flesh [sample unit (i)]x100/Declared net weight of raw breaded portionsx5(ii)

(iii) Frequency of on-line fish flesh content determination shall be a minimum of three determinations of fish flesh content for small production runs or lots, i.e., 3×(three groups of five unbreaded portions). For larger production runs or lots, a minimum of one determination i.e., 1×(three groups of five unbreaded portions), shall be made for every hour of production of product units of the same weight.

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.322 Use of alternate methods of fish flesh determination.

(a) The end-product method in § 264.321(f) for determining fish flesh content shall be used for lot and appeal inspections and may be used for verification inspection.

(b) The on-line method in § 264.321(g) for determining fish flesh content may be used during processing operations.

§ 264.325 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260. Subpart A of this chapter (Regulations Governing Processed Fishery Products), except that a sample unit shall consist of 10 portions taken at random from one or more packages as required.

Subpart F—United States Standards for Grades of Frozen Fried Fish Sticks

§ 264.351 Description of the product.

Frozen fried fish sticks are clean wholesome, rectangular-shaped unglazed masses of cohering pieces (not ground) of fish flesh coated with breading and partially cooked. The sticks are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; are fried, packaged, and frozen in accordance with good manufacturing practices. They are maintained at temperatures necessary for preservation of the product. Frozen fried fish sticks weigh up to and including 1½ ounces; are at least three-eighths of an inch thick; and their largest dimension is at least three times the next largest dimension. All sticks in an individual package are prepared from the flesh of one species of fish.

§ 264.352 Composition of the product.

(a) Frozen fried fish sticks shall contain 60 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.371(f). Fish flesh content may be determined by the on-line method as set forth in § 264.371(g): *Provided*, That the results are consistent with the fish flesh content requirement of 60 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.353 Grades.

(a) "U.S. Grade A" is the quality of frozen fried fish sticks that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen fried fish sticks that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen fried fish sticks that meet the requirements of § 264.351 *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.361 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points*. Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points*. The factor of "flavor and odor" is evaluated organoleptically by smelling, and tasting, after the product has been cooked in accordance with § 264.371.

(1) Good flavor and odor (essential requirements for a Grade A Product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B Product) means that the cooked product is lacking in good flavor and odor but is free from objectable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Loose free oil, and/or moderate loose breading and/or moderate frost	2
	Large degree: Oil soaking through package and/or excessive loose breading and/or excessive amount frost	5
2 Ease of separation	Minor: Hand separated with difficulty.—Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken stick	Break or cut greater than ½ length or width.—Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or multilated[1]	
4 Damaged stick	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest sticks is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest sticks:	
	Over 1.0; not over 1.15	0
	Over 1.15; not over 1.3	2
	Over 1.3; not over 1.4	5
	Over 1.4	10
	COOKED STATE	
7 Distortion	Minor: Bending, shrinking, twisting (¼ to ½ inch).—Each affected	1
	Major: Excessive bending, shrinking, twisting (over ½ inch).—Each affected	2
8 Color	Minor: Sticks differing slightly from average color of sticks in sample unit.—Each affected	2
	Major: Sticks excessively dark or light from average color of sticks in sample unit.—Each affected	4
	Bare spots, blistering, ridges, breaks, curds[1]	
9 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	3
	Skin, blood spots, bruises, discolorations[1]	
10 Blemishes	Minor: 1 to 6 instances.—Each affected	1
	Major: Over 6 instances.—Each affected	3
11 Bones	Sticks containing bones (potentially harmful).—Each affected	10
Texture		
12 Coating	Small degree: Moderately dry, soggy, doughy, oily, and tough	5
	Large degree: Farinaceous (mealy), pasty, very tough and/or oily	15
13 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, and rubbery	15

[1] An instance = each 1/16 square inch (¼-inch square).

§ 264.371 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen fried fish sticks taken at random from one or more packages as required. The fish sticks are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of free excess oil and/or loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating sticks from each other or from packaging material that are frozen together after the frying operation and during the freezing.

(3) "Broken stick" means a stick with a break or cut equal to or greater than one-half the width of the stick.

(4) "Damaged stick" means a stick that has been mashed, physically or mechanically injured, misshaped or

mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the stick affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen sticks. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length of width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the sticks. Uniformity is measured by the combined weight of the two heaviest sticks divided by the combined weight of the two lightest sticks. No deductions are made for weight ratios less than 1.15.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, onto a flat pan or sheet of sufficient size to accommodate 10 sticks spaced at least ¼ inch apart. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F. until thoroughly cooked (about 15 to 18 minutes or to an internal temperature of 160° F.).

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the stick. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Color" refers to the reasonably uniform color typical of the sample material.

(3) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the stick surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as one whether it is full or fractional.

(4) "Blemishes" refers to skin, blood spots, or bruises, objectionable dark fatty flesh, carbon specks or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as one whether it is full or fractional.

(5) "Bones" means the presence of potentially harmful bones in a stick. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(6) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues; oiliness to the degree of impairment of texture; and/or mealiness.

(7) "Texture defects of the fish flesh" refers to the absence of normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, softness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—end-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen fried fish sticks (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen fried fish sticks by dividing the declared net weight on the label by the number of fish sticks indicated on the label to obtain the weight of an individual fish stick and multiply by three. If the number of fish sticks contained in the package is not declared on the label, the actual weight of three frozen fried fish sticks shall be used:

(ii) Using tongs, place each stick individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for sticks held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish stick from the water and blot the stick lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the stick on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some sticks prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" stick in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step (iii) toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish sticks.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

% fish flesh = Weight of fish flesh (vi) × 100/Weight of three fried fish sticks (i)

(g) "Minimum fish flesh content—on-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish sticks (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—balance accurate to 0.1 gram.

(2) Procedure:

(i) Weigh three groups of five raw unbreaded fish sticks from the line. These weights should be recorded and averaged (average weight of three groups of five sticks) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish sticks and the declared net weight of five fried fish sticks. The declared net weight of five fried fish sticks is obtained by dividing the net weight declaration on the label by the number of fish sticks declared on the label and multiplying by 5. If the number of fish sticks is not declared on the label, the actual weight of five fried fish sticks shall be used.

% fish flesh = Weight of fish flesh [sample unit (i)] × 100/Declared or actual net weight of five fried fish sticks

NOTE: The percent fish flesh determined by the on-line method will usually differ from the percent fish flesh determined by the end-product method due to processing and variations associated therewith.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 x (three groups of five unbreaded fish sticks). For larger productions runs or lots, a minimum of one determination, i.e., 1 x (three groups of five unbreaded fish sticks) shall be carried out for every hour of production of product units of the same weight.

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.372 Use of alternate methods for determinations fish flesh content.

(a) The official end-product method in § 264.371(f) for determining fish flesh content shall be used for lot and appeal inspections, and for inspections for verification in official establishments when the on-line method is used.

(b) The on-line method in § 264.371(g) for determining fish flesh content may be used in official establishments during processing operations.

§ 264.375 Tolerances for certification of officially drawn samples.

The sample rate and grade of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart G—United States Standards for Grades of Frozen Fried Fish Portions

§ 264.401 Description of the product.

Frozen fried fish portions are clean, wholesome, uniformly shaped, unglazed masses of cohering pieces (not ground) of fish flesh coated with breading and partially cooked. The portions are cut from frozen fish blocks; coated with a suitable, wholesome batter and breading; are fried, packaged, and frozen in accordance with good manufacturing practices. They are maintained at temperatures necessary for preservation of the product. Frozen fried fish portions weigh more than 1½ ounces and are at least three-eighths of an inch thick. All portions in an individual package are prepared from the flesh of one species of fish.

§ 264.402 Composition of the product.

(a) Frozen fried fish portions shall contain 65 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.421(f). Fish flesh content may be determined by the on-line method as set forth in § 264.421(g): *Provided,* That the results are consistent with the fish flesh content requirement of 65 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.403 Grades.

(a) "U.S. Grade A" is the quality of frozen fried fish portions that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen fried fish portions that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen fried fish portions that meet the requirements of § 264.401 *Description of product,* but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.411 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting, after the product has been cooked in accordance with § 264.421.

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS

[See footnote at end of table.]

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Loose free oil, and/or moderate loose breading and/or moderate frost.	3
	Large degree: Oil soaking through package and/or excessive loose breading and/or excessive amount frost.	6
2 Ease of separation	Minor: Hand separated with difficulty.—Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken portion	Break or cut greater than ½ length or width.—Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or mutilated [1]	
4 Damaged portion	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest portions is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest portions:	
	Over 1.0; not over 1.20	0
	Over 1.20; not over 1.3	3
	Over 1.3; not over 1.4	6
	Over 1.4	10
	COOKED STATE	
7 Distortion	Major: Bending, shrinking, twisting (¼ to ½ inch).—Each affected	1
	Minor: Excessive bending, shrinking, twisting (over ½ inch).—Each affected.	2
8 Color	Minor: Portions differing slightly from average color of portions in sample unit.—Each affected	2
	Major: Portions excessively darker or lighter from average color of portions in sample unit.—Each affected.	4
	Bare spots, blistering, ridges, breaks, curds [1]	
9 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	3
	Skin, blood spots, bruises, discolorations [1]	
10 Blemishes	Minor: 1 to 6 instances.—Each affected	1
	Major: Over 6 instances.—Each affected	3
11 Bones	Portions containing bones (potentially harmful).—Each affected	10
Texture		
12 Coating	Small degree: Moderately dry, soggy, doughy, oily and/or tough	5
	Large degree: farinaceous (mealy), pasty, very tough and/or oily	10
13 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, and/or rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

§ 264.421 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen fried fish portions taken at random from one or more packages as required. The portions are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of free excess oil and/or loose breading and/or loose frost.

(2) "Ease" of separation refers to the difficulty of separating portions from each other or from packaging material that are frozen together after the frying operation and during the freezing.

(3) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(4) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the portion affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions. No deductions are made for weight ratios less than 1.20.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, onto a flat pan or sheet of sufficient size to accommodate 10 portions spaced at least ¼ inch apart. Place the pan and frozen contents in a properly ventilated oven preheated to 420° F. until thoroughly cooked (about 15 to 18 minutes or to an internal temperature of 160° F.).

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the portions. distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Color" refers to the reasonably uniform color within the sample unit.

(3) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the portion surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filed with coagulated albumin. Instances of those defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as 1 whether it is full or fractional.

(4) "Blemishes" refers to skin, blood spots or bruises, objectionable dark fatty flesh, carbon specks or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(5) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(6) "Texture defects of the coating" refers to the absence of the normal textural properties of the cooked coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues; oiliness to the degree of impairment of texture; and/or mealiness.

(7) "Texture defects of the fish flesh" refers to the absence of the normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, mushiness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but also is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—end-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen fried fish portions (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen fried fish portions by dividing the declared net weight on the label by the number of fish portions indicated on the label to obtain the weight of an individual fish portion and multiply by three. If the number of fish portions contained in the package is not declared on the label, the actual weight of three frozen fried fish portions shall be used.

(ii) Using tongs, place each portion individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 and 110 seconds for portions held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish portion from the water and blot the portion lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the portion on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some portions prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" portion in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish portions.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

$$\% \text{ fish flesh} = \text{Weight of fish flesh (vi)} \times 100 / \text{Weight of three fried fish portions (i)}$$

(g) "Minimum fish flesh content—on-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish portions (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded fish portions from the line. These weights should be recorded and averaged (average weight of three groups of five portions) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish portions and the declared net weight of five fried fish portions. The declared net weight of five fried fish portions is obtained by dividing the net weight declaration on the label by the number of fish portions declared on the label and multiplying by 5. If the number of fish portions is not declared on the label the actual weight of 5 fried fish portions shall be used.

% fish flesh = Weight of fish flesh (vi) × 100/ Weight of five fried fish portions (i)

NOTE: The percent fish flesh determined by the on-line method will usually differ from the percent fish flesh determined by the end-product method due to processing and variations associated therewith.

(iii) Frequency of on-line fish flesh content determination.A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 x (three groups of five unbreaded fish portions). For larger production runs or lots, a minimum of one determination, i.e., 1 x (three groups of five unbreaded fish portions) shall be carried out for every hour of production of product units of the same weight.

[42 FR 52764, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 264.422 Use of alternate methods for determining fish flesh content.

(a) The official end-product method in § 264.421(f) for determining fish flesh content shall be used for lot and appeal inspections, and for inspections for verification in official establishments when the on-line method is used.

(b) The on-line method in § 264.421(g) for determining fish flesh content may be used in official establishments during processing operations.

§ 264.425 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Subpart A—Uunited States General Standards for Grades of Shrimp

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Subpart B—United States Standards for Grades of Frozen Raw Breaded Shrimp

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Subpart A—United States General Standards for Grades of Shrimp

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 47 FR 21841, May 20, 1982, unless otherwise noted.

§ 265.101 Scope and product description.

These standards shall apply to clean, wholesome shrimp of the regular processed commercial species that are fresh or frozen, raw or cooked. Such shrimp are processed and maintained in accordance with good commercial practice at temperatures necessary for the preservation of the product. The provisions of 50 CFR Part 260, "Inspection and Certification" shall apply to this subpart.

§ 265.102 Product forms.

(a) *Types* (1) Fresh.

(2) Frozen individually (IQF) glazed or unglazed.

(3) Frozen solid pack, glazed or unglazed.

(b) *Styles.* (1) Raw (uncoagulated protein).

(2) "Parboiled"—heated for a period of time such that the surface of the product reaches a temperature adequate to coagulate the protein.

(3) "Cooked"—heated for a period of time such that the thermal centre of the shrimp reaches a temperature adequate to coagulate the protein.

(c) *Market forms.* (1) Heads on (head, shell, tail fins on).

(2) Headless (only head removed; shell, tail fins on).

(3) Peeled, round, tail off (all shell and tail fins removed with segments unslit and vein not removed).

(4) Peeled, round, tail on (all shell except last shell segment and tail fins removed, with segment unslit and vein not removed).

(5) Peeled and deveined, round, tail off (all shell and tail fins removed with segments shallowly slit to last segment and vein removed to last segment).

(6) Peeled and deveined, round, tail on (all shell removed except last shell segment, and tail fins, with segments shallowly slit to last segment and vein removed to last segment).

(7) Peeled and deveined, fantail or butterfly tail off (all shell and tail fin removed with segments deeply slit to last segment and vein removed to last segment).

(8) Peeled and deveined, fantail or butterfly, tail on (all shell removed except last shell segment and tail fins, with segments deeply slit to last segment and vein removed to last segment).

(9) Peeled and deveined, western (all shell removed except last shell segment and tail fins, with segments split completely to last segment and vein removed to last segment).

(10) Shell on pieces (head removed, shell and tail fins when existing not removed).

(11) Peeled and deveined, round pieces (all shell removed with segments shallowly slit except last segment when existing; vein removed except last segment when existing).

(12) Peeled and deveined butterfly pieces (all shell removed with segments deeply slit except last segment when existing; vein removed except last segment when existing).

(13) Peeled undeveined pieces (all shell removed).

(14) Other forms of shrimp as specified and so designated on the label.

§ 265.103 Grades.

Each sample unit inspected shall be graded in accordance with the following specifications. Grades shall be assigned to lots in accordance with § 265.104(f).

(a) U.S. Grade A shrimp shall:

(1) Possess good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) Not exceed the tolerance level for defects for U.S. Grade B quality set forth in § 265.104, Table II.

(b) U.S. Grade B shrimp shall:

(1) Possess reasonably good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) Not exceed the tolerance level for defects for U.S. Grade A quality set forth in § 265.104, Table II.

(c) U.S. Grade C shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics ofthe species as defined in § 265.104(d), and

(2) Not exceed the tolerance level for defects for U.S. Grade C quality set forth in § 265.104, Table II.

(d) Substandard shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) Exceed the tolerance level for physical defects for U.S. Grade C quality as set forth in § 285.104, Table II.

(e) *Ungraded shrimp.* Shrimp which do not possess minimum flavor and odor characteristics of the species as defined in § 265.204(d) will not be graded. If any condition constituting a defect action level (as defined in

§ 265.106, Appendix 2) is found to exist, the product shall be classified as "decomposed" and shall be retained as unfit for human consumption.

§ 265.104 Ascertaining the grade.

The grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Inspection and Certification, Regulations Governing Processed Fishery Products).

(a) *General procedures.* The grade shall be determined by evaluation of fresh shrimp in the fresh and cooked states, and by evaluation of frozen shrimp in the frozen, thawed and cooked states, as appropriate for each evaluation. Shrimp shall be evaluated for odor and flavor in accordance with paragraph (d) of this section. Shrimp shall be evaluated for physical characteristics, defects and uniformity of size in accordance with paragraph (e) of this section. Deviation from normal characteristics, extent of defects, and lack of uniformity are classified as to relative severity as minor, major or serious in accordance with § 265.104, Table I; tolerance levels for the various characteristics and defects are set forth for each grade classification in § 265.104, Table II.

(b) *Sampling.* Lot size, number of sample units and acceptance numbers shall be in accordance with the regulation governing processsed fishery products, 50 CFR 260.61, Table II, V, or VI, whichever is applicable. Unless otherwise specified, the sample unit shall consist of a package or packages sufficient to provide two pounds declared net weight. In evaluation for uniformity of size, the sample unit shall be one entire package.

(c) *Count.* "Count", or number of shrimp per pound, is determined by dividing the number of shrimp in the adjusted sample unit by the adjusted weight in pounds. Shrimp marketed as "pieces" shall not be subject to this evaluation.

(1) "Adjusted weight" means the weight of all of the whole, unbroken, undamaged shrimp in the sample unit. It is determined by deleting the weight of shrimp pieces, broken and damaged shrimp, inadvertently or improperly peeled shrimp, improperly deveined shrimp, and unuseable material (all as defined in § 265.104(e)) from net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(2) "Adjusted sample unit" means the number of shrimp comprising the adjusted weight. If the count so ascertained does not conform with the declared count, the sample unit shall be considered a deviant. A lot shall be considered to be of the declared count if the number of deviant units in the sample does not exceed the acceptance number prescribed for the sample size in Part 260 of this chapter. If the number of deviant units in a lot exceeds the acceptance number for deviant units, it shall be marked as a mixed lot and shall not be graded.

(d) *Evaluation of flavor and odor*—(1) *Procedure.* Sensory evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For raw odor evaluation, frozen shrimp shall be thawed. Fresh or thawed shrimp are broken and the broken flesh is held close to the nose immediately to detect off odor. Cooked style shrimp shall be evaluated for flavor and odor as is, thawed if frozen. For evaluation of flavor and odor fresh or frozen uncooked style shrimp after cooking, use the procedure in Appendix 1, § 265.106 for cooking all samples. Sensory evaluation of cooked samples shall be completed as soon as practical after cooking while the samples are still warm.

(2) *Definitions of flavor and odor.* (i) Good flavor and odor (minimum requirements for Grade "A" shrimp) means that the product has the normal, pleasant flavor and odor characteristic of freshly caught shrimp that is free from off-flavors and odors of any kind. A natural odor or flavor reminiscent of iodoform is acceptable unless excessive.

(ii) Reasonably good flavor and odor (minimum requirements for Grade "B" shrimp) means that the product may be somewhat lacking in good flavor and odor characteristic of freshly caught shrimp but is free from objectionable off-flavors and off-odors of any kind.

Within a sample unit, each shrimp shall be Class 1 as defined in Appendix 2, § 265.106.

(iii) Minimum acceptable flavor and odor (minimum requirements of a Grade "C" or "substandard" product) means that the raw product and the cooked product have a moderate storage-induced odor (for the raw product) and flavor and odor (for the cooked product) but the product is reasonably free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

Reasonably free means that within a sample unit, less than 5 percent of the shrimp may show class 2 decomposition as defined in Appendix 2, § 265.106. None of the shrimp shall show Class 3 decomposition.

(e) *Evaluation of physical characteristics and defects.* Each sample unit shall be evaluated as to physical characteristics and defects in accordance with the following definitions and methods of analysis. If examining frozen shrimp that have been glazed, remove the glaze using Procedure 18.001 of the Association of Official Analytical Chemists immediately before starting the examination. (Appendix 3, § 262.106.)

(1) *Dehydration.* Dehydration refers to a general desiccation of the shrimp flesh that is noticeable after the shell and glaze are removed. It is evaluated by noting any detectable change from the normal characteristic, bright appearance of freshly caught, properly iced or properly processed shrimp.

(i) Slight dehydration means scarcely noticeable desiccation of the shrimp flesh that will not affect the desirability and/or eating quality of the shrimp.

(ii) Moderate dehydration means conspicuous desiccation of the shrimp flesh that will not seriously affect the desirability and/or eating quality of the shrimp.

(iii) Severe dehydration means conspicious desiccation that will seriously affect the desirability and/or eating quality of the shrimp.

(2) Deterioration is evaluated by noting any detectable change in the normal good odor of freshly caught, properly iced or properly processed shrimp.

(i) Slight deterioration means that overall the sample unit lacks the normal characteristic pleasant odor of freshly caught, properly iced or properly processed shrimp; the desirability and/or eating quality of the shrimp is not affected.

(ii) Moderate deterioration means that overall the sample unit has scarcely noticeable odors of prolonged storage and/or off-odors that materially affect the desirability and/or eating quality of the shrimp.

(iii) Severe deterioration means that overall the sample unit has definite odors of prolonged storage and/or spoilage odors that seriously affect the desirability and/or eating quality of the shrimp.

(3) Presence of broken or damaged shrimp. Fresh or thawed shrimp (glaze removed) shall be visually examined. Broken or damaged shrimp, identified as follows, are grouped together and evaluated by noting the percent by weight of such broken or damaged shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Broken" means a shrimp having a break in the flesh greater than ⅓ of the thickness of the shrimp measured where the break occurs.

(ii) "Damaged" means a shrimp that is crushed or mutilated so as to materially affect its appearance and/or useability.

(4) *Presence of shrimp pieces.* (Shrimp marketed as "pieces" will not be subject to this evaluation.) Fresh or thawed shrimp shall be visually examined. "Piece" means:

(i) For a count of 70 or fewer unglazed shrimp per pound, any shrimp that has fewer than 5 segments, with or without tail fins attached; or

(ii) For a count of more than 70 unglazed shrimp per pound, any shrimp that has fewer than 4 segments; or

(iii) Any whole shrimp with a break in the flesh greater than ⅔ of the thickness of the shrimp measured where the break occurs.

Shrimp pieces so identified are grouped together and evaluated by noting the percent by weight of such pieces in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(5) *Presence of unuseable material (legs, flippers, loose shell, antennae, heads, swimmerets, extraneous material and unacceptable shrimp).* The product shall be visually examined in the fresh or thawed state. Unuseable materials, defined as follows, are separated from the shrimp and evaluated by noting the percent by weight of such unuseable material in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Legs" refers to walking legs only (heads-on market form excepted); if attached should be detached and weight thereof evaluated.

(ii) "Loose shell" and "antennae" refer to any piece of shell or antennae which is completely detached from the shrimp.

(iii) "Flipper" refers to the tail fin with or without the last shell segment attached, with or without flesh.

(iv) "Head" refers to any portion of the head (cephalothorax). (Heads-on shrimp excepted).

(v) "Extraneous material" means any material in the sample unit which is not shrimp material.

(vi) "Unacceptable shrimp" refers to abnormal or diseased shrimp.

(6) "Black spot and improperly cleaned ends" refer to presence of any objectionable black or darkened area that affects the desirability and/or eating quality of the shrimp. Affected shrimp are grouped together and evaluated by noting the percent by weight of such shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106). Shrimp with black spot and/or improperly cleaned ends shall, if they are considered defective in other categories, also be evaluated in such other categories.

(7) *Presence of inadvertently or improperly peeled, or improperly deveined shrimp.* Fresh or thawed shrimp shall be visually examined to determine whether the particular market form being examined has been properly peeled and/or deveined (i.e. head, shell segments, swimmerets, tail fins, and alimentary canal have been removed) in accordance with the description of that market form as set forth in § 265.102(c). Inadvertently peeled, improperly peeled and improperly deveined shrimp, identified as follows, are grouped together (one class of defect) and evaluated by noting the percent by weight of such shrimp in the total sample unit. (Inadvertently peeled, improperly peeled, or improperly deveined shrimp that are also considered broken, damaged, or pieces, shall be evaluated only as broken, damaged, or pieces, accordingly).

(i) "Inadvertently or improperly peeled" refers to a shrimp with any shell or shell fragments missing or intact other than as outlined under § 265.102(c). (Shell-on shrimp with tail fins and/or telson missing is inadvertently peeled, but if the last segment of flesh is missing, the shrimp is damaged).

(ii) "Improperly deveined" refers to a shrimp with any attached black or dark vein other than as outlined under § 265.102(c).

(8) *Uniformity of size.* The product shall be evaluated in the fresh or thawed state for uniformity of size as follows:

(i) From the adjusted sample unit (all whole, unbroken, undamaged shrimp in the sample unit except that if marketed as "pieces", evaluation shall be of uniformity of size of undamaged pieces) visually select and weigh not more than 10 percent by count, but not less than one of the largest shrimp;

(ii) Visually select and weigh not more than 10 percent by count, but not less than one, of the smallest shrimp;

(iii) Divide the weight of the large shrimp by the weight of the small shrimp and the result will be the uniformity ratio.

(9) *Texture.* "Texture" refers to an undesirable toughness and/or dryness and/or mushiness of shrimp. The product is examined in the cooked state (if uncooked style, cooked in accordance with procedures specified in Appendix 1, § 265.106) and evaluated by noting deviations from the normal characteristics of the species when freshly caught, properly processed, and cooked. The texture of the cooked shrimp should be firm, slightly resil-

ient, but not tough, moist but not mushy. Deviations are classified as:

(i) Slight—Fairly firm, moist, but not mushy.

(ii) Moderate—Moderately tough, moist, but not mushy.

(iii) Severe—Excessively tough, very dry, or very mushy.

(f) *Grade Assignment.* Physical characteristics and defects of each sample unit shall be classified and points assigned in accordance with Table I; the tolerance level for each grade shall be in accordance with Table II. Each sample unit shall be assigned the grade into which it falls in accordance with the evaluation of flavor and odor and tolerance level for characteristics and defects as specified in § 265.103. The grade assigned to a lot is the grade assigned to the majority of the sample units; provided that if:

(1) The number of sample units which fall one grade below the majority grade (by reason of flavor and odor evaluation or physical characteristics and defects) exceeds the acceptance number prescribed for the sample size (number of sample units) as specified in § 260.61; or

(2) The grade of any one of the sample units falls more than one grade below the majority grade in flavor and odor evaluation or by reason of physical characteristics and defects, the grade assigned to the lot shall be one grade below the majority grade.

§ 265.105 Hygiene.

Shrimp shall be processed and maintained in accordance with §§ 260.98 to 260.104 of this chapter and of the Good Manufacturing Practice regulations contained in 21 CFR Part 110.

TABLE I—CLASSIFICATION OF DEFECTS

Defect	Points Assigned		
	Minor	Major	Serious
1. Dehydration: Slight	1		
Desiccation:			
Moderate		2	
Severe			4
2. Uniformity ratio of weight as defined in § 265.104(e)(8):			
1.75 to 1.99	1		
2.00 to 2.25		2	
Over to 2.25			4
3. Deterioration:			
Slight	1		
Moderate		2	
Severe			4
4. Black spot and improperly cleaned ends:			
From 1% to 4% (by weight)	1		
From 4% to 6% (by weight)		2	
More than 6% (by weight)			4
5. Pieces:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
6. Damaged and broken:			
From 2% to 4% (by weight)	1		
From 4% to 10% (by weight)		2	
More than 10% (by weight)			4
7. Legs, loose shell, antennae, flippers, extraneous material heads, or unacceptable shrimp:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
8. Improperly peeled, inadvertently peeled, and improperly deveined:			
From 1% to 6% (by weight)	1		
From 6% to 10% (by weight)		2	
More than 10% (by weight)			4
9. Texture:			
Slight	1		
Moderate		2	
Severe			4

TABLE II—TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major defects	Serious defects
U.S. Grade A:	
Up to and including 5 points	None.
U.S. Grade B:	
Over 5 points, up to and including 9 points.	None.
U.S. Grade C:	
Over 9 points, up to and including 13 points.	Up to 4 points.

§ 265.106 Appendices.

APPENDIX 1

Procedures for cooking samples in sensory evaluation of cooked flavor and odor.

"Cooked in a suitable manner" (Cooked style excepted) means that a portion of the thawed product has been cooked as follows:

Place 2 to 4 ounces of shrimp in a sauce pan with 1 pint of water and 1 teaspoon of salt. (Salt optional.) Cook until internal temperature reaches 160 degrees F (70 degrees C). Drain and cool without rinsing and check for flavor, odor, and texture.

APPENDIX 2

Defect Action Levels

These defect action levels apply to sample units of fresh or frozen shrimp.

A defect action level occurs if at least one of the following conditions is present:

If 5 percent or more of the shrimp in a sample unit show Class 3 decomposition; or

If 20 percent or more of the shrimp in a sample unit show Class 2 decomposition; or

If the percentage of shrimp showing Class 2 decomposition plus four times the percentage of those showing Class 3 decomposition equals at least 20 percent of the shrimp in a sample unit.

The classes are defined as follows:

Class 1—Passable

This category includes fishery products that range from very fresh to those that contain fishy odors or other odors characteristic of the commercial product, not definitely identifiable as decomposition.

Class 2—Decomposed (Slight but Definite)

The first stage of definitely identifiable decomposition. An odor is present that, while not really intense, is persistent and readily perceptible to the experienced examiner as that of decomposition.

Class 3—Decomposed (Advanced)

The product possesses a strong odor of decomposition which is persistent, distinct and unmistakable.

APPENDIX 3

Determination of Net Weight

Regulatory tolerances for net weight are established under the provisions of the Federal Food Drug and Cosmetic Act, as amended.

The following procedures are based on the Thirteenth Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists.

18.001 Net Weight of Frozen Seafoods—Procedure

Set scale, 32.050, on firm support and level. Adjust zero load indicator or rest point and check sensitivity.

(a) *Glazed seafoods*—Remove package from low temperature storage, open immediately, and place contents under gentle spray of cold water. Agitate carefully so product is not broken. Spray until all ice glaze that can be seen or felt is removed. Transfer product to circular No. 8 sieve, 20 cm (8″) diameter for product less than or equal to 0.9 kg (2 lb.) and 20 cm (12″) for product greater than 0.9 kg (2 lb.). Without shifting product, incline sieve at angle of 17-20° to facilitate drainage and drain exactly 2 minutes (stop watch). Immediately transfer product to tarred pan (B) and weigh (A). Weight product = A − B.

Modified AOAC 18.016 and 13.017 method for determining the net weight of frozen peeled shrimp blocks and packages.

(a) *Equipment needed.* (i) Container of sufficient size and capacity so as to completely submerge the product. Wire mesh basket large enough to contain contents of package and with opening small enough to retain all pieces. Expanded metal test-tube basket or equivalent, fully line with standard 16 mesh per linear inch insect screen, mesh bags or other suitable containers are also satisfactory.

(ii) Balance. Sensitive to 0.01 ounce or 0.25 g.

(iii) Sieve. U.S. standard #8 wire sieve 12″ diameter (30 centimeters).

(iv) Thermometer.

(v) Stop watch.

(b) *Procedures.* Place contents of individual package in wire mesh basket and immerse in container of fresh water so that top of basket extends above water level. Introduce water at 80°±5°F (26°C±3°C) at bottom of container at flow rate of 1-3 quarts or liters per minute. As soon as the product thaws so that the glaze can be removed and the shirmp separated easily, transfer all material to 12″ (30 centimeters) No. 8 sieve, distributing evenly. Tilt the sieve to above 20 degrees and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

"Drained weight" of cooked shrimp is determined by the following AOAC 18.018 method modified.

Procedure

(i) Weigh product free of all wrapping and record weight. Place product in a container containing an amount of fresh potable water 80°±5°F (26°C±3°C) equal to 8 times the declared weight of the product. If product is block frozen, turn block over several times during thawing. If frozen shrimp are caked together they may be parted manually provided they are not injured in the process. When all the ice has melted, empty the shrimp into a 12" (30 centimeters) 8 sieve, distributing evenly. Tilt the sieve to about 20° and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

[47 FR 21841, May 20, 1982, as amended at 51 FR 34991, Oct. 1, 1986]

Subpart B—United States Standards for Grades of Frozen Raw Breaded Shrimp

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52776, Sept. 30, 1977, unless otherwise noted.

§ 265.151 Product description.

Frozen raw breaded shrimp are whole, clean, wholesome, headless, peeled shrimp which have been deveined where applicable of the regular commercial species, coated with a wholesome, suitable batter and/or breading. Whole shrimp consist of five or more segments of unmutilated shrimp flesh. They are prepared and frozen in accordance with good manufacturing practice and are maintained at temperatures necessary for the preservation of the product. Individual shrimp and/or pieces consolidated into larger units and covered with breading are not considered for grading under this standard.

§ 265.152 Composition of the product.

(a) Frozen raw breaded shrimp shall contain not less than 50 percent by weight of shrimp material when the weight of the shrimp material is determined by the end product method as set forth in § 265.171(u).

(b) Shrimp material content of raw breaded shrimp may be determined by the on-line method as set forth in § 265.171(v): *Provided*, That the results are at least in compliance with the shrimp material content requirement of 50 percent by weight when verified by the official end product method.

(c) Production methods employed in official establishments shall be kept relatively constant for each product lot so as to minimize variations in any factor which may affect the relative shrimp material content.

§ 265.153 Styles.

(a) *Style I.* "Regular Breaded Shrimp" are frozen raw breaded shrimp containing a minimum of 50 percent of shrimp material.

(b) *Style II.* "Lightly Breaded Shrimp" are frozen raw breaded shrimp containing a minimum of 65 percent of shrimp material.

§ 265.154 Types.

(a) *Type I—Breaded fantail shrimp*—(1) *Subtype A.* Split (butterfly) shrimp with the tail fin and the shell segment immediately adjacent to the tail fin.

(2) *Subtype B.* Split (butterfly) shrimp with the tail fin but free of all shell segments.

(3) *Subtype C.* Split (butterfly) shrimp without attached tail fin or shell segments.

(b) *Type II—Breaded round shrimp*—(1) *Subtype A.* Round shrimp with the tail fin and the shell segment immediately adjacent to the tail fin.

(2) *Subtype B.* Round shrimp with the tail fin but free of all shell segments.

(3) *Subtype C.* Round shrimp without attached tail fin or shell segments.

(c) *Type III—Breaded split shrimp.* [Reserved]

§ 265.155 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded shrimp that when cooked possesses a good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen raw breaded shrimp that when cooked possesses a reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen raw breaded shrimp that fail to meet the requirements of "U.S. Grade B."

§ 265.161 Ascertaining the grade.

General. In addition to considering other requirements outlined in the standard, the following quality factors are evaluated in ascertaining the grade of the product.

(a) Factors not rated by score points: Flavor and odor. Flavor and odor are determined by organoleptic means after the product has been cooked in a suitable manner (§ 265.171(u)).

(b) Factors rated by score points: The quality of the product with respect to factors scored is expressed numerically on the scale of 100. Deductions from the maximum possible score of 100 are assessed for essential variations of quality within each factor. The score of frozen raw breaded shrimp is determined by observing the product in the frozen and thawed states.

§ 265.162 Factors evaluated on the product in the breaded state.

(a) Factors affecting qualities that are measured on the product in the breaded state are uniformity of size, condition of coating, extraneous material, and damaged breaded shrimp. For the purpose of rating the factors that are scored in the breaded state, the schedule of point deduction in table 1 applies. This schedule of point deductions is based on the examination of one complete individual package or intended package (sample unit) regardless of the net weight of the contents of the package.

(b) The factor—ease of separation in the frozen state—shall be rated in addition to all other factors when frozen raw breaded shrimp is lot inspected on a lot basis.

§ 265.163 Factors evaluated on unbreaded or thawed debreaded product.

Factors affecting qualities that are measured on the product in the unbreaded or thawed debreaded state are degree of deterioration, dehydrations, sand veins, black spot, extra shell, extraneous material, and swimmerets. For the purpose of rating the factors that are scored in the unbreaded or thawed debreaded state, the schedule of point deductions in table 2 applies. This schedule of point deductions is based on the examination of 20 whole shrimp selected from the processing line or from one or more packages. Examination of this sample of 20 whole shrimp is continued under § 265.171(u).

§ 265.164 Hygienic processing.

Frozen raw breaded shrimp shall be processed and maintained in accordance with the applicable requirements of the Good Manufacturing Practice Regulations contained in Part 128 of Title 21, CFR, and the applicable requirements contained in Part 260 of this chapter.

§ 265.171 Definitions and methods of analysis.

(a) "*Fantail shrimp*": This type is prepared by splitting and peeling the shrimp except that for Subtype A, the tail fin remains attached and the shell segment immediately adjacent to the tail fin remains attached. Subtype B, the tail fin remains, but the shrimp are free of all shell segments. Subtype C, the shrimp are free of tail fins and all shell segments.

(b) "*Round shrimp*": This type is the round shrimp, not split. The shrimp are peeled except that for Subtype A, the tail fin remains attached and the shell segment immediately adjacent to the tail fin remains attached. Subtype B, the tail fin remains, but the shrimp are free of all shell segments. Subtype C, the shrimp are free of all shell segments and tail fins.

(c) *Good flavor and odor:* "Good flavor and odor", essential requirements for a Grade A product, means that the cooked product has flavor and odor characteristics of freshly caught or well-refrigerated shrimp and the breading is free from staleness and off-flavors and off-odors of any kind. Iodoform is not to be considered in evaluating the product for flavor and odor.

(d) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" minimum requirements of Grade B products, means that the cooked product may be somewhat lacking in the good flavor and odor characteristics of freshly caught or well-refrigerated shrimp but is free from objectionable off-flavors and objectionable off-odors of any kind.

(e) "*Dehydration*" refers to the occurrence of whitish areas on the exposed ends of the shrimp (due to the drying of the affected area) and to a generally desiccated appearance of the meat after the breading is removed.

(f) "*Deterioration*" refers to any detectable change from the normal good quality of freshly caught shrimp. It is evaluated by noting in the thawed product deviations from the normal odor and appearance of freshly caught shrimp.

(g) "*Extraneous material*" consists of nonedible material such as sticks, seaweed, shrimp thorax, or other objects that may be accidentally present in the package.

(h) *Slight:* "Slight" refers to a condition that is scarcely noticeable but does affect the appearance, desirability, and/or eating quality of breaded shrimp.

(i) *Moderate:* "Moderate" refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, and/or eating quality of the breaded shrimp.

(j) *Marked:* "Marked" refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability, and/or eating quality of the breaded shrimp.

(k) *Excessive:* "Excessive" refers to a condition that is very noticeable and is seriously objectionable and the product cannot be graded above Grade B; this is a limiting rule.

(l) *Halo:* "Halo" means an easily recognized fringe of excess batter and breading extending beyond the shrimp flesh and adhering around the perimeter or flat edges of a split (butterfly) breaded shrimp.

(m) *Balling up:* "Balling up" means the adherence of lumps of the breading material to the surface of the breaded coating, causing the coating to appear rough, uneven, and lumpy.

(n) *Holidays:* "Holidays" means voids in the breaded coating as evidenced by bare or naked spots.

(o) *Damaged frozen raw breaded shrimp:* "Damaged frozen raw breaded shrimp" means frozen raw breaded shrimp that have been separated into two or more parts or that have been crushed or otherwise mutilated to the extent that their appearance is materially affected.

(p) *Black spot:* "Black spot" means any blackened area that is markedly apparent on the flesh of the shrimp.

(q) *Sand vein:* "Sand vein" means any black or dark sand vein that has not been removed, except for that portion under the shell segment adjacent to the tail fin when present.

(r) *Extra shell:* "Extra shell" means any shell segment(s) or portion thereof, contained in the breaded shrimp except the first segment adjacent to the tail fin for Type I, Subtype A, and Type II, Subtype A.

(s) *Net weight:* Net weight is determined by use of a balance and by following steps given below:

1. Remove the overwrap.
2. Weigh carton and all contents.
3. Transfer breaded shrimp to balance and weigh.
4. Weigh carton less shrimp but including waxed separators and inserts (if used), crumbs, and frost.
5. Remove crumbs and frost from carton and separators.
6. Weigh cleaned carton and separators.
7. Net weight of the shrimp is the weight of the shrimp and of any loose breading and frost, exclusive of packaging material. The amount of loose breading and frost shall not exceed the limits of good manufacturing practices.

(t) *Uniformity:* "Uniformity" is determined for packs of various sizes by the ratio of the weights of the largest to the smallest breaded shrimp as outlined by the following schedule:

Up to 10 oz	3 largest/3 smallest
10.1 oz. to 1.5 lb	6 largest/6 smallest
1.51 lb. to 2.5 lb	8 largest/8 smallest
Over 2½ lb	10 largest/10 smallest

(u) Percent shrimp material—official end product method:

(1) Equipment needed:

(i) Two-gallon container approximately 9 inches in diameter.

(ii) Two-vaned wooden paddle, each vane measuring approximately 1¾ inches by 3¾ inches.

(iii) Stirring device capable of rotating the wooden paddle at 120 rpm.

(iv) Balance accurate to 0.01 ounce (0.1 gram).

(v) U.S. standard sieve—1/2-inch sieve opening; 12-inch diameter.

(vi) U.S. standard sieve—ASTM—No. 20, 12-inch diameter.

(vii) Forcepts, with blunt points.

(viii) Shallow baking pan.

(ix) Rubber policeman to remove bits of breading from shrimp.

(2) *Procedure:* (i) Weigh sample (20 shrimp) to be debreaded. Fill container three-fourths full of water at 70°-80° F. Suspend the paddle in the container leaving a clearance of at least 5 inches below the paddle vanes, and adjust speed to 120 rpm. Add shrimp and stir for 10 minutes. Stack the sieves, the ½-inch mesh over the No. 20 and pour contents of container onto them. Set the sieves under a faucet, preferably with spray attached, and rinse the shrimp without rubbing the flesh, being careful to keep all rinsings over the sieves and not having the stream of water hit the shrimp on the sieve directly. Use a rubber policeman to remove adhering breading. Lay the shrimp out singly on the sieve as rinsed, split side down and tails up. Remove top sieve and drain on a 45-degree angle for 2 minutes, then transfer shrimp to balance. Rinse contents of the No. 20 sieve onto a shallow baking pan and collect any particles of shrimp material (flesh, tail fin), and add to shrimp on balance and weigh.

(ii) Calculate percent shrimp material.

% shrimp material=[Weight of debreaded sample (20 shrimp)×100/Weight of sample (20 shrimp)]+2

(v) *Percent shrimp material—on-line method:* Percent shrimp material determined by the on-line method refers to the percent by weight of shrimp material in a sample as described below:

(1) Equipment needed:

(i) Water bath (a container with a 3- to 4-liter capacity).

(ii) Balance accurate to 0.1 gram or 0.01 ounce.

(iii) Stop-watch or regular watch readable to a second.

(iv) U.S. Standard sieve—1/2-inch sieve opening; 12-inch diameter.

(v) U.S. Standard sieve ASTM No. 20, 12-inch diameter.

(vi) Thermometer (immersion type accurate to ±2° F.).

(vii) Forceps, with blunt points.

(viii) Shallow pan.

(ix) Rubber policeman to remove bits of breading from shrimp.

(2) *Procedure:* (i) Select in a random manner, a composite sample of 20 unfrozen raw breaded shrimp from production line(s). Weigh the composite sample on a scale, determining the weight of the sample to the nearest 0.1 gram or 0.01 ounce. Place the sample in a water bath filled to three-fourths capacity and in a container maintained at 60° F.-85° F. After shrimp are submerged in water and breading becomes soft, a "gentle" swirling action with hands may be applied to the shrimp to speed up the removal of the breading. Stack the sieves, the 1/2-inch mesh over the No. 20 and pour contents of container into them. Remove top sieve and drain on 45-degree angle for 2 minutes then transfer shrimp to balance. Rinse contents of No. 20 sieve onto a shallow pan and collect any particles of shrimp material (flesh, tail fin, etc.), and add to the shrimp on the balance and then weigh.

(ii) Calculate percent shrimp material:

% shrimp material=Weight of debreaded sample×100/Weight of sample

(iii) Frequency of on-line shrimp material content determination. A minimum of three determinations of shrimp material content shall be carried out for small production runs or lots of the same style product, i.e., 3 × (20 unfrozen raw breaded shrimp). For larger production runs or lots of the same style product, a minimum of one determination, i.e., 1 × (20 unfrozen raw breaded shrimp) shall be carried out for every hour of production of product of the same style.

(w) *Cooked in a suitable manner:* "Cooked in a suitable manner" means cooked in accordance with the instructions accompanying the product. If, however, specific instructions are lacking, the product for inspection is cooked as follows:

(1) Transfer the breaded shrimp, while still frozen, in a wire mesh deep fry basket sufficiently large to hold the shrimp in a single layer without touching one another.

(2) Lower the basket into a suitable liquid oil or hydrogenated vegetable oil at 350°-375° F. Cook for 3 minutes, or until the shrimp attain a pleasing golden brown color.

(3) Remove basket from the oil and allow the shrimp to drain for 15 seconds. Place the cooked shrimp on a paper towel or napkin to absorb the excess oil.

[47 FR 21841, May 20, 1982, as amended at 51 FR 34991, Oct. 1, 1986]

§ 265.172 Use of alternate methods of shrimp material determination.

(a) The official end product method in § 265.171(u) for determining shrimp material content shall be used for lot inspection, appeal inspection, and inspection for verification in official establishments when the on-line method is used.

(b) The on-line method in § 265.171(v) (2) for determining shrimp material content may be used during processing operations.

§ 265.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS FOR RATING IN BREADED STATE

Factor	Quality description	Ded. allow. Points
1 Ease of separation in the frozen state.	Separate easily after being removed from carton and exposed to room temperature for not more than 4 minutes.	3
	Separate easily after being removed from carton and exposed to room temperature for not more than 6 minutes.	6
	Does not separate easily after being removed from carton and exposed to room temperature for 6 minutes.	10
2 Uniformity	Ratio of weight of largest to smallest breaded shrimp in sample unit as defined under § 265.171(t):	
	Up to 1.50	0
	1.51-1.60	1
	1.61-1.70	2
	1.71-1.80	3
	1.81-1.90	4
	1.91-2.00	5
	2.01-2.10	6
	2.11-2.20	7
	2.21-2.30	8
	2.31-2.40	9
	Over 2.40	10
3 Condition of coating	Degree of halo or balling up or holidays (identify type of defect by circling the proper word):	
	Slight—each 20 percent by count or fraction thereof	1
	Moderate—each 20 percent by count or fraction thereof	2
	Marked—each 20 percent by count or fraction thereof	4
	Excessive—each 20 percent by count or fraction thereof	16
4 Damaged breaded shrimp	For each 5 percent by count or fraction thereof	3
	Tail fin broken or missing each 5 percent or fraction thereof (except in Type I, subtype C, and Type II, subtype C).	1
5 Extraneous material	If extraneous material, except filthy or deleterious substances, is found in more than one package per lot, the entire lot shall be declared substandard[1].	

[1] Filthy or deleterious substances in food products constitute a violation of the Food, Drug, and Cosmetic Act. Products containing such substances are ineligible for the purpose of applying this document.

TABLE 2—SCHEDULE OF POINT DEDUCTIONS FOR EXAMINATION IN UNBREADED OR THAWED DEBREADED STATE

[Subtotals brought forward]

Factor	Quality description	Ded allow. Points
1 Degree of dehydration	Slight—each shrimp	1
	Moderate—each shrimp	2
	Marked—each shrimp	3
	Excessive—each shrimp	16
2 Deterioration	Slight—each shrimp	2
	Moderate—each shrimp	5
	Marked—each shrimp	10
	Excessive—each shrimp (provided that, if excessive deterioration occurs in more than one sample unit per sample, the entire lot shall be declared substandard).	20
3 Sand veins where applicable [1]	For each dark vein present deduct according to the following schedule	
	Equivalent in length to two segments	1
	Equivalent in length to three segments	2
	Equivalent in length to four or more segments	3
4 Black spot	Slight but obvious, on average	3
	Moderate, on average	6
	Marked—each shrimp	3
5 Extra shell (see subtypes definition)	(Beyond first segment adjacent to tail fin only for Type I, subtype A, and Type II, subtype A):	
	Less than one whole extra shell segment	1
	One extra segment or more	3
6 Swimmerets	For last pair only adjacent to tail fins	1
	For more than last pair	3
7 Extraneous material	If extraneous material, except filthy or deleterious substances, are found in more than one package per lot, the entire lot shall be declared substandard.[2]	

[1] Deduction points for sand veins shall not be applied to shrimp smaller than 70 count per pound in the raw, headless state. The corresponding size in the breaded state is 40 count per pound and 80 count per pound in the peeled state.

[2] Filthy or deleterious substances in food products constitute a violation of the Food, Drug, and Cosmetic Act. Products containing such substances are ineligible for the purpose of applying this document.

[42 FR 52776, Sept 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

PART 266—UNITED STATES STANDARDS FOR GRADES OF MOLLUSCAN SHELLFISH

Subpart A—United States Standards for Grades of Frozen Raw Scallops

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AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52782, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Raw Scallops

§ 266.101 Description of the product.

Frozen raw scallops are clean, wholesome, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species. The portion of the scallop used shall be only the adductor muscle "eye" which controls the shell movement. Scallops shall be washed, drained, packed, and frozen in accordance with good manufacturing practices and are maintained at temperatures necessary for the preservation of the product. Only scallops of a single species shall be used within a lot.

§ 266.102 Styles.

(a) *Style I.* Solid pack scallops are frozen together into a solid mass.

(1) *Substyle a.* Glazed.

(2) *Substyle b.* Not glazed.

(b) *Style II.* Individually quick-frozen pack (IQF) scallops are individually quick frozen. Individual scallops can be separated without thawing.

(1) *Substyle a.* Glazed.

(2) *Substyle b.* Not glazed.

§ 266.103 Types.

(a) *Type 1.* Adductor muscle.

(b) *Type 2.* Adductor muscle with catch (gristle or sweet meat) portion removed.

§ 266.104 Grades.

(a) "U.S. Grade A" is the quality of frozen raw scallops that: (1) possess good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw scallops that: (1) possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for these factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw scallops that meets the requirements of § 266.101, *Description of the product,* but otherwise fails to meet the requirements of "U.S. Grade B."

§ 266.111 Determination of the grade.

In a plant under Contract USDC Inspection, the grade is determined by examining the product for factors 1 to 5 in the fresh or thawed state and Factor 6 in the cooked state. For lot inspection, examination of the product for Factor 1 is carried out in the frozen state and 2 to 5 in the thawed state. Factor 6 is examined in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variation in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "Flavor and odor" is evaluated organoleptically by smelling and tasting the product in the cooked state.

(1) Good flavor and odor (essential requirements for a U.S. Grade A product) means that the product has the typical flavor and odor of the species and is free from bitterness, staleness, and off-flavor and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements for a U.S. Grade B product) means the product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 266.121 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of the primary container and its entire contents. The number and size of sample units to be examined shall be as indicated in § 260.61.

(b) *Examination of sample, frozen state.* When this product is examined under Contract USDC Inspection, the samples are examined for Factor 1 in Table 1 in the fresh or thawed state. When the product is lot inspected, the samples are examined for Factor 1, in Table 1 in the frozen state.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Dehydration	Small degree: Easily scraped off of each 10 percent of top surface affected	2
	Large degree: Deep dehydration not easily scraped off, affecting each 10 percent of surface.	4
	FRESH OR THAWED STATE	
1 Undesirable pieces.	Percent by weight:	
	Up to 5 percent	3
	Over 5 percent—not over 10 percent.	6
	Over 10 percent	16
3 Uniformity	Weight ratio:	
	Over 2.5—not over 3.0	4
	Over 3.0—not over 3.3	6
	Over 3.3	10
4 Color	Each 10 percent by count of nonuniform colored scallops in excess of the 10 percent of nonuniform colored scallops permitted.	10
5 Extraneous material.	Minor: Each instance of minor extraneous material in the sample unit per pound.	1
	Major: Each instance of major extraneous material in the sample unit per pound.	5
	COOKED STATE	
6 Texture	Firm but tender and moist	0
	Small degree: Moderately tough, dry, and fibrous or mushy.	5
	Large degree: Excessively tough, dry and fibrous or mushy.	15

(1) "Dehydration" refers to the loss of moisture from the scallops surface during frozen storage. Small degree of dehydration is color-masking but can be easily scraped off. Large degree of dehydration is deep, color-masking, and requires a knife or other instrument to scrape it off.

(c) *Examination of sample, thawed state.* When necessary, thawing the sample is best accomplished by enclosing it in a water impermeable film-type bag and immersing in an agitated water bath at 68° F.±2° F. The complete thawing of the product is determined by gently squeezing the bag occasionally until no hard core or ice crystals are felt.

(1) Undesirable small pieces are pieces which will pass through the openings in a ¾-inch sieve for larger size scallops. For the smaller scallops, such as bay scallops, undesirable pieces are pieces of scallops that do not have the general conformation of the other scallops. The total weight of these pieces within a sample unit will be obtained. These pieces shall not be used for determining the weight ratio.

(2) Uniformity of size refers to the degree of weight uniformity of the individual scallops. This factor is measured by obtaining a weight ratio between the largest and smallest scallops. The determination is made on the thawed scallops by dividing the total weight of the 15 percent (by count) of the largest scallops by the 15 percent (by count) of the smallest scallops.

(3) "Color" refers to reasonably uniform color characteristics of the species used within an individual container. Only noticeable variation in color from the predominating color of the scallops in the container is considered. Medium gray to black colored scallops are not to be graded.

(4) "Extraneous materials" are pieces or fragments of undesirable material that are naturally present in or on the scallops and which should be removed during processing.

(i) An instance of minor extraneous material includes but is not limited to each occurrence of intestines, seaweed, etc., and each aggregate of sand and grit up to ½-inch square and located on the scallop surface. Deduction points shall be assessed for additional instances of intestines, seaweed, etc., and aggregates of sand and grit up to ½-inch square.

(ii) An instance of major extraneous material includes but is not limited to each instance of shell or aggregate of embedded sand or other extraneous embedded material that affects the appearance or eating quality of the product.

(d) *Examination of sample, cooked state.* Cooked state means the state of the sample after being cooked. Place at least 25 percent by weight of the thawed sample from each sample unit into a boilable film-type pouch and seal. Submerge the pouch and its contents into boiling water for about 3 or 4 minutes or until cooked. Alternatively the product is placed into a baking pan lined with aluminum foil. A cover of aluminum foil is crimped around the edges of the top of the pan. The pan is placed in an oven that has been pre-heated to 450° F. for 20 minutes or until cooking has been completed. Flavor and odor and texture shall be evaluated in the cooked state.

(1) "Texture" refers to the firmness, tenderness, and moistness of the cooked scallop meat, which is characteristic of the species.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight" means the total weight of the scallop meats within the package after removal of all packaging materials, ice glaze, or other protective materials.

[42 FR 52782, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 266.125 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

Subpart B—United States Standards for Grades of Frozen Raw Breaded Scallops and Frozen Fried Scallops

EDITORIAL NOTE: Nomenclature changes to Subpart B appear at 44 FR 32393, June 6, 1979.

§ 266.151 Product description.

(a) *Frozen raw breaded scallops*—Frozen raw breaded scallops are: (1) Prepared from wholesome, clean, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species, or scallop units cut from a block of frozen scallops that are coated with wholesome batter and breading; (2) packaged and frozen according to good commercial practice and maintained at temperatures necessary for preservation; and (3) composed of a minimum of 50 percent by weight of scallop meat.

(b) *Frozen fried scallops*—Frozen fried scallops are: (1) Prepared from wholesome, clean, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species, or scallop units cut from a block of frozen scallops that are coated with wholesome batter and breading; (2) precooked in oil or fat; (3) packaged and frozen according to good commercial practice and maintained at temperatures necessary for preservation; and (4) composed of a minimum of 50 percent by weight of scallop meat.

[44 FR 32392, June 6, 1979]

§ 266.152 Styles.

The styles of frozen raw breaded scallops and frozen fried scallops include:

(a) *Style I Random pack.* Scallops in a package are reasonably uniform in weight and/or shape. The weight or shape of individual scallops are not specified.

(b) *Style II Uniform pack.* Scallops in a package consist of uniform shaped pieces which are of specified weight or range of weights.

§ 266.153 Types.

(a) *Type 1.* Adductor muscle.

(b) *Type 2.* Adductor muscle with catch (gristle or sweet meat) portion removed.

[44 FR 32392, June 6, 1979]

§ 266.154 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded scallops and frozen fried scallops that possess good flavor and odor; and for those factors of quality which are rated according to the scoring system outlined in this part, the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen raw breaded scallops and frozen fried scallops that possess at least reasonably good flavor and odor; and for those factors of quality which are rated according to the scoring system outlined in this part, the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen raw breaded scallops and frozen fried scallops that fail to meet the requirements of U.S. Grade B.

[42 FR 52782, Sept. 30, 1977. Redesignated and amended at 44 FR 32392, June 6, 1979]

§ 266.161 Ascertaining the grade.

The grade of frozen raw breaded scallops and frozen fried scallops is determined by examining the product in the frozen and cooked states. Factors of quality evaluated in ascertaining the grade of the product are flavor and odor appearance, uniformity, absence of defects, and character.

(a) Flavor and odor are rated directly by organoleptic evaluation. Score points are not assessed (see § 266.162).

(b) Appearance, uniformity, absence of defects, and character are rated numerically on a scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	[1] 25
Uniformity	[1] 20
Absence of defects	40
Character	[1] 15
Total possible score	100

[1] Frozen raw breaded scallops and frozen fried scallops which receive the maximum number of deduction points for any of these factors shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

[42 FR 52782, Sept. 30, 1977, as amended at 51 FR 34991, Oct. 1, 1986]

§ 266.162 Evaluating the unscored factor of flavor and odor.

(a) "Good flavor and odor" (essential requirements for a Grade A product) means that the cooked product has flavor and odor characteristics of good scallop meat and of the breading and is free from staleness and off-flavors and off-odors of any kind.

(b) "Reasonably good flavor and odor" (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

(c) "Substandard flavor and odor" (Substandard grade) means that the flavor and odor fails to meet the minimum requirements of "reasonably good flavor and odor."

§ 266.163 Evaluating and rating the scored factors of appearance, uniformity, workmanship defects, and character.

Point deductions are allotted for each degree or amount of quality variation within each of the factors that are scored. The net score for each quality factor is obtained by subtracting the deduction-points assessed for that factor from the maximum points allotted to that factor. The total score for the product is the sum of the net scores for the four individually scored factors.

§ 266.164 Appearance.

(a) Appearance refers to the condition of the package and ease of separation in the frozen state and continuity and color in the cooked state.

(1) "Condition of the package" refers to freedom from packaging defects and the presence in the package of oil, and/or loose breading, and/or frost. Deduction points are based on the degree of the improper condition as small or large.

(2) "Ease of separation" refers to the difficulty of separating scallops that are frozen together after the frying operation and during freezing.

(3) "Continuity" refers to the completeness of the coating of the product in the cooked state. Lack of continuity is exemplified by breaks, ridges and/or lumps of breading. Each $\frac{1}{16}$ square inch area of any break, ridge, or lump of breading is considered an instance of lack of continuity. Individual breaks, ridges, or lumps of breading measuring less than $\frac{1}{16}$ square inch are not considered objectionable. Deduction points are based on the percentage of the scallops within the package that contain small and/or large instances of lack of continuity.

(4) "Color" refers to reasonably uniform color which is characteristic of the product in the cooked state.

Deviations in color are visually measured as "small" and "large". A "small" instance of deviation in color means that the scallop varies noticeably from the predominating color of the package. A "large" instance of deviation in color means that the scallop varies markedly from the predominating color of the package. The deduction points assessed are based on the degree of deviation as small or large and the percentage by count of the scallops affected in the package.

(b) For the purpose of rating the factor of appearance, the schedule of deduction points in Table I applies. Frozen raw breaded scallops and frozen fried scallops which receive 25 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCHEDULE OF POINT-DEDUCTIONS FOR VARIATIONS IN APPEARANCE

Appearance subfactors	Method of determining subfactor score	Ded points
Condition of the package in the frozen state	Degree of condition of the package (a) Small (moderate amount of free oil and/or loose breading, and/or frost, and/or packaging defects) (b) Large (excessive amount of free oil, and/or loose breading, and/or frost, and/or packaging defects)	2 5

Appearance subfactors	Method of determining subfactor score	Percent of scallops affected		Ded points
		Over—	Not over—	
Ease of separation of the scallops in frozen state	Degree of ease of separation Moderate (scallops separated by hand with difficulty)	0	30	1
		30	70	2
		70	—	3
	Severe (scallops separated only by use of knife or other instrument)	0	30	4
		30	70	10
		70	—	15
Continuity of the scallops in the cooked state	Lack of continuity (breaks, ridges, and lumps)[1]	0	20	2
		20	50	4
		50	70	6
	Small (1 to 3 instances per scallop)	70	—	10
		0	20	4
	Large (over 3 instances per scallop)	20	50	8
		50	70	12
		70	—	25
Color of the scallops in the cooked state	Deviation from predominating color of fried scallops in cooked state Small instance of deviation in color means that the scallop varies noticeably from the predominating color of the package after cooking	0	10	0
		10	30	2
		30	—	4
	Large instance of deviation in color means that the scallop varies markedly from the predominating color of the package after cooking	0	10	4
		10	30	10
		30	—	25

[1] Each 1/16 square inch is considered an instance.

§ 266.165 Uniformity.

(a) Uniformity refers to the degree of freedom from undesirably small pieces and to the degree of uniformity of the weights of the frozen raw breaded scallops and frozen fried scallops within the package.

(1) For Style I, deduction points are assessed for: (i) Undesirable small pieces as determined by the percent by count of pieces passing through a sieve with ¾ inch openings, and (ii) uni-

formity of size of the scallops remaining in the sieve as determined by the ratio of the weight of the 15 percent largest scallops (minimum three) divided by the 15 percent smallest scallops (minimum three). The number constituting this percentage shall be the closest approximation of 15 percent, determined by count.

(2) For Style II, deduction points are based on the percentage by count of small or large scallops deviating from the average weight within the package.

(b) For the purpose of rating the factor of uniformity, the schedules of deduction points in Table II apply. Frozen raw breaded scallops and frozen fried scallops which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE II—SCHEDULE OF POINT-DEDUCTIONS FOR UNIFORMITY

Factor	Method of determining subfactor score	Percent of scallops affected		Ded points
		Over—	Not over—	
Uniformity of size and weight of scallops in frozen state.	A. Style I (Random pack)			
	(a) Undesirable small pieces which pass through a sieve with ¾ inch openings.	0	10	3
		10	20	6
		20	—	10
	(b) Weight ratio of scallops remaining in the sieve. The 15 percent largest scallops (minimum 3) divided by the 15 percent smallest scallops (minimum 3). The 15 percent to be determined by count.	—	[1]2.0	[1]0
		[1]2.0	[1]2.5	[1]1
		[1]2.5	[1]2.9	[1]3
		[1]2.9	[1]3.3	[1]6
		[1]3.3	—	[1]10
	B. Style II (Uniform pack)			
	Deviation from average weight			
	(a) Small (scallops deviating ± 10 to 20 percent from average weight).	0	30	3
		30	70	5
		70	—	10
	(b) Large (scallops deviating over ± 20 percent from average weight).	0	30	6
		30	70	10
		70	—	20

[1] Ratio.

§ 266.166 Workmanship defects.

(a) Workmanship defects refer to the degree of freedom from doubled and misshaped scallops and extraneous material. The defects of doubled and misshaped scallops are determined by examining the frozen product, while the defects of extraneous materials are determined by examining the product in the cooked state. Deduction points are based on the percentage by count of the scallops affected within the package.

(1) *Doubled scallops.* Two or more scallops that are joined together during the breading and/or frying operations.

(2) *Misshaped scallops.* Elongated, flattened, mashed or damaged scallop meats.

(3) *Extraneous material.* Extraneous materials are pieces or fragements of undesirable material that are naturally present in or on the scallops and which should be removed during processing.

(i) Examples of minor extraneous material include intestines, seaweed, and each aggregate of sand and grit within an area of ½-inch square.

(ii) Examples of major extraneous material include shell, aggregate of embedded sand or other extraneous embedded material that affects the appearance or eating quality of the product.

(b) For the purpose of rating the absence of defects, the schedule of deduction points in Table III applies.

TABLE III—SCHEDULE OF POINT DEDUCTIONS FOR WORKMANSHIP DEFECTS, SUBFACTORS, MISSHAPED OR DOUBLED SCALLOPS, AND EXTRANEOUS MATERIAL

Defect subfactors	Method of determining subfactor score	Percent of scallops affected		Deduction points
		Over—	Not over—	
Misshaped or doubled scallops in the frozen state	Misshaped scallops (elongated, flattened, mashed, or damaged scallop meats)	0	10	3
		10	20	7
		20		15
	Doubled scallops (2 or more scallops joined together during breading and/or frying operation)			
Extraneous material in the cooked state	Minor: Each instance of minor extraneous material in the sample unit per pound			1
	Major: Each instance of major extraneous material in the sample unit per pound			5

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392, June 6, 1979]

§ 266.167 Character.

(a) Character refers to the texture of the scallop meat and of the coating and the presence of gristle in the cooked state. Deduction points are based on the degree of variaion in the texture attributes of the coating and scallop meat or the relationship between the number of instances and the number of scallops within the package.

(1) *Gristle.* Gristle (type 2 only) is the tough elastic tissue usually attached to the scallop meat. Each instance of gristle is an occurrence.

(2) *Texture* refers to the firmness, tenderness, and moistness of the cooked scallop meat and to the crispness and tenderness of the coating of the cooked product. The texture of the scallop meat may be classified as a degree of mushiness, toughness, and fibrousness. The texture of the coating may be classified as a degree of pastiness, toughness, dryness, mushiness, or oiliness.

(b) For the purpose of rating the factor of character, the schedules of deduction points in Tables IV and V apply. Frozen raw breaded scallops and frozen fried scallops which receive 15 deduction points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE IV—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF TEXTURE

Character subfactors	Method of determining subfactor score	Ded. points
Texture in the cooked state	Texture of the coating	
	Firm or crisp but not tough, pasty, mushy, or oily	0
	Moderately tough, pasty, mushy, or oily	5
	Excessively tough, pasty, mushy, or oily	15
	Texture of the scallop meat	
	Firm, but tender and moist	0
	Moderately tough, dry, and/or fibrous or mushy	5
	Excessively tough, dry, and/or fibrous or mushy	15

TABLE V—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF GRISTLE

Number of scallops per 7 ounces	Number of instances of gristle								
	0	1	2	3	4	5	6	7	8 or more
	Point deductions								
10 or less	0	2	4	6	8	10			
11	0	2	4	6	8	10			
12	0	2	4	6	8	10			
13	0	1	3	5	8	10			
14	0	1	3	5	7	9	10		
15	0	1	2	4	6	8	10		
16	0	1	2	4	6	8	10		
17	0	1	2	4	6	8	10		
18	0	1	2	3	4	6	8	10	
19	0	1	2	3	4	6	8	10	
20 or more	0	1	2	3	4	6	8	10	

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392 June 6, 1979]

§ 266.171 Definitions and methods of analysis.

(a) *Percent of scallop meat* refers to percent, by weight, of scallop meat in a sample as determined by the following method:

(1) *Equipment needed.* (i) Water bath (3 to 4 liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch with second hand.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(2) *Procedure.* (i) Weigh all scallops in the sample while still in a hard frozen condition.

(ii) Place each scallop individually in the water bath which is maintained at 63° to 86° F. and allow the scallop to remain until such time as the breading becomes soft and can easily be removed from the still frozen meat (between 10 to 30 seconds for scallops held in storage at 0° F.).

(iii) Remove the scallop from the bath; blot lightly with double thickness paper toweling; and scrape off or pick out coating from the scallop meat with the spatula or nutpicker.

(iv) Weigh all "debreaded" scallop meats.

(v) Calculate the percent of scallop meat in the sample by the following formula:

Percent scallop meat = weight of scallop meat (iv) × 100/Weight of frozen fried or breaded scallops (i)

(b) *Cooked state.* Cooked state shall mean that the product shall be cooked in accordance with the instructions accompanying the product.

(1) If specific instructions are lacking for fried scallops, the product for inspection shall be cooked as follows: Spread the frozen scallops on a foil covered baking sheet or a shallow pan. Place sheet or pan with frozen content at the mid-point of a properly ventilated oven preheated to 400 degrees Fahrenheit until thoroughly cooked, 15 to 20 minutes.

(2) If specific instructions are lacking for the breaded scallops, the product for inspection shall be cooked as follows: Place frozen, breaded product in wire mesh fry basket large enough to hold all items in single layer. Heat by immersing in 375° F (190° C) edible cooking oil 2-3 minutes or until items float to surface. After cooking, let items drain 15 seconds and place on paper napkin or towel to absorb excess oil.

(c) *Definitions.* (1) "Moderate" refers to a scored condition that is readily noticeable but is not seriously objectionable.

(2) "Excessive" refers to a condition that is very noticeable and is seriously objectionable.

(3) "Instance" refers to an occurrence of an individual scored subfactor on a scallop.

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392, June 6, 1979; 51 FR 34991, Oct. 1, 1986]

§ 266.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

PART 267—UNITED STATES STANDARDS FOR GRADES OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

Sec.

267.101 Scope and product description.
267.102 Product presentation.
267.103 Grades.
267.104 Grade determination.
267.105 Tolerances for lot certification.
267.106 Hygiene.
267.107 Methods of analysis.
TABLE 1—DEFECT TABLE

AUTHORITY: 16 U.S.C. 742e; 7 U.S.C. 1622, 1624.

SOURCE: 52 FR 37155, Oct. 5, 1987, unless otherwise noted.

§ 267.101 Scope and product description.

(a) These U.S. Standards for Grades apply to products derived from farm-raised, or from rivers and lakes, North American freshwater catfish of the following common commercial species and hybrids thereof:

(1) Channel catfish (*Ictalurus punctatus*)
(2) White catfish (*Ictalurus catus*)
(3) Blue catfish (*Ictalurus furcatus*)
(4) Flathead catfish (*Pylodictis olivaris*)

(b) Fresh products will be packaged in accordance with good commercial practices and maintained at temperatures necessary for the preservation of the product. Frozen products will be frozen to 0°F (−18°C) at their center (thermal core) in accordance with good commercial practices and maintained at temperatures of 0°F (−18° C) or less.

(c) These Standards for Grades will be implemented in accordance with the guidance set forth in Part II of NOAA Handbook 25, "Inspectors Instructions for Grading North American Freshwater Catfish and Products Made Therefrom".

§ 267.102 Product presentation.

Catfish products may be presented and labeled as follows:

(a) Types—

(1) Fresh, or

(2) Frozen.

(b) Styles—

(1) Skin on, or

(2) Skinless.

(c) Market forms include but are not limited to the following:

(1) Headed and gutted.

(2) Headed and dressed are headed and gutted usually with fins removed. This form may be presented with or without the dorsal spine and with or without the collar bone.

(3) Whole fillets are practically boneless pieces of fish cut parallel to the entire length of the backbone with the belly flaps and with or without the black membrane.

(4) Trimmed fillets are whole fillets without belly flaps.

(5) Fillet strips are strips of fillets weighing not less than ¾ ounce.

(6) Steaks are units of fish not less than 1½ ounces in weight which are sawn or cut approximately perpendicular (30 degrees to 90 degrees) to the axial length or backbone. They have two reasonably parallel surfaces. The number of tail sections that may be included in the package must not exceed the number of fish cut per package).

(7) Nuggets are pieces of belly flaps with or without black membrane and weighing not less than ¾ ounce.

§ 267.103 Grades.

(a) U.S. Grade A fresh or frozen products will possess good flavor and odor and be within the limits specified for defects for U.S. Grade A quality in § 267.104 of this part.

(b) U.S. Grade B fresh or frozen products will possess reasonably good flavor and odor and be within the limits specified for defects for U.S. Grade B quality in § 267.104 of this part.

(c) U.S. Grade C fresh or frozen products will possess reasonably good flavor and odor and be within the limits specified for defects for U.S Grade C quality in § 267.104 of this part.

§ 267.104 Grade determination.

(a) *Procedures for grade determination.* The grade will be determined by evaluating the fresh product in the fresh and cooked states or the frozen product in the frozen, thawed, and cooked states in accordance with applicable paragraphs in this section.

(b) *Sampling.* Lot size, number of sample units, and acceptance numbers will be selected in accordance with § 260.61 of this chapter, Tables II, V, or VI as applicable. A sample unit consists of 10 "portions" for market forms (1) and (2) as defined in § 267.102(c) of this part, or at least 2 pounds of "portions" for market forms (3) through (7). "Portion" is one unit of any of the market forms.

(c) *Evaluation of flavor and odor*—(1) *Definition of flavor and odor.* (i) Good flavor and odor (minimum requirements for a Grade A product) mean that the product has the normal, pleasant flavor and odor characteristics of the species, and it is free from off-odors and off-flavors of any kind.

(ii) Reasonably good flavor and odor (minimum requirements of Grade B and Grade C products) mean that the product may be somewhat lacking in good flavor and odor characteristics of the species but it is free from objectionable off-odors and off-flavors of any kind.

(2) *Procedure.* For raw odor evaluation, frozen portions are thawed. Fresh or thawed portions are broken apart and the exposed flesh immediately held close to the nose to detect any off-odors. To evaluate cooked flavor and odor, cook the sample units using the procedure referenced in § 267.107 of this part.

(d) *Examination for physical defects.* Each sample unit will be examined for physical defects using the defect definitions that follow. Deduction points are assigned in accordance with Table I.

(1) *Dehydration* applies to all frozen market forms. It refers to the loss of moisture from the surface resulting in a whitish, dry, or porous condition:

(i) *Slight:* surface dehydration which is not color masking (readily removed by scraping) and affecting 3 to 10 percent of the surface area.

(ii) *Moderate:* deep dehydration which is color masking, cannot be scraped off easily with a sharp instrument, and affects more than one percent but not more than 10 percent of the surface area.

(iii) *Excessive:* deep dehydration which is color masking, and cannot be easily scraped off with a sharp instrument and affects more than 10 percent of the surface area.

(2) *Condition of the product* applies to all market forms. It refers to freedom from packaging defects, cracks in the surface of a frozen product, and excess moisture (drip) or blood inside the package. Deduction points are based on the degree of this defect.

(i) Slight refers to a condition that is scarcely noticeable but that does not affect the appearance, desirability or eating quality of the product.

(ii) Moderate refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, or eating quality of the product.

(iii) Excessive refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability or eating quality of the product.

(3) *Discoloration* applies to all market forms. It refers to colors not normal to the species. This may be due to mishandling or the presence of blood, bile, or other substances.

(i) *Slight:* 1/16 square inch up to and including one square inch in aggregate area.

(ii) *Moderate:* greater than one square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(4) *Uniformity* applies to size or weight controlled products. It refers to the degree of uniformity of the weights of the portions in the contain-

er. It is obtained by weighing individual portions to determine their conformity to declared weights. Uniformity will be assigned in accordance with weight tolerances as follows:

WEIGHT OF PORTION

0.75 to 4.16 ounces
  Moderate: Over ⅛ ounce but not over ¼ ounce above or below declared weight of portion
  Excessive: In excess of ¼ ounce above or below declared weight of portion
4.17 to 11.20 ounces
  Moderate: Over ⅛ ounce but not over ½ ounce above or below declared weight of portion
  Excessive: In excess of ½ ounce above or below declared weight of portion
11.21 to 17.30 ounces
  Moderate: Over ⅛ ounce but not over ¾ ounce above or below declared weight of portion
  Excessive: In excess of ¾ ounce above or below declared weight of portion

(5) *Skinning cuts* apply to skinless market forms. It refers to improper cuts made during the skinning operation as evidenced by torn or ragged surfaces or edges, or gouges in the flesh which detract from a good appearance of the product.

(i) *Slight:* 1/16 square inch up to and including 1 square inch in aggregate area.

(ii) *Moderate:* Over one square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(6) *Heading* applies to market forms (1) and (2) is defined in § 267.102(c) of this part. It refers to the presence of ragged cuts or pieces of gills, gill cover, pectoral fins or collar bone after heading. Deduction points also will be assigned when the product is presented with the collar bone and it has been completely or partially removed.

(i) *Slight:* 1/16 square inch up to and including one square inch in aggregate area.

(ii) *Moderate:* Over one square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(7) *Evisceration* applies to all market forms. It refers to the proper removal of viscera, kidney, spawn, blood, reproductive organs, and abnormal fat (leaf). The evisceration cut should be smooth and clean. Deduction points are based on the degree of defect.

(i) *Slight:* 1/16 square inch up to and including 1 square inch in aggregate area.

(ii) *Moderate:* Over 1 square inch up to and including 2 square inches in aggregate area.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(8) *Fins* refer to the presence of fins, pieces of fins or dorsal spines. It applies to all market forms except headed and gutted or headed and dressed catfish or catfish steaks. Deduction points also will be assigned when the product is intended to have the dorsal spine but it has been completely or partially removed.

(i) *Slight:* Aggregage area up to including one square inch.

(ii) *Moderate:* Over one square inch area up to and including 2 square inches.

(iii) *Excessive:* Over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(9) *Bones* (including pin bone) apply to all fillet and nugget market forms. Each bone defect is a bone or part of a bone that is 3/16 inch or more at its maximum length *or* 1/32 inch or more at its maximum shaft width, or for bone chips, a length of at least 1/16 inch. An excessive bone defect is any bone which *cannot* be fitted into a rectangle, which has a length of 1 9/16 inch and a width of ⅜ inch.

(10) *Skin* refers to the presence of skin on skinless market forms. For semi-skinned forms, a skin defect is the presence of the darkly pigmented outside layers. Points will be assessed for each aggregate area greater than ½ square inch up to and including one square inch.

(11) *Bloodspots* refer to the presence of coagulated blood. *Bruises* refer to

softening and discoloration of the flesh. Both bloodspots and bruises apply to all market forms. Points will be assessed for each aggregate area of bloodspots or bruises greater than ½ square inch up to and including one square inch.

(12) *Foreign material* refers to any extraneous material, including packaging material, not derived from the fish that is found on or in the sample. Each occurrence will be assessed.

(13) *Texture* applies to all market forms and refers to the presence of normal texture properties of the cooked fish flesh, i.e., tender, firm, and moist without excess water. Texture defects are described as dry, tough, mushy, rubbery, watery, and stringy.

(i) *Moderate:* Noticeably dry, tough, mushy, rubbery, watery, stringy.

(ii) *Excessive:* Markedly dry, tough, mushy, rubbery, watery, stringy.

(e) *Listing defect points.* Each sample unit is examined for physical defects, using the list of definitions given in this section. The point deductions for defects are listed for each sample unit, and the point values totaled. The total of the defect points determines the sample unit grade. The scoring system is based on a perfect score of zero.

(f) *Grade assignment.* Each sample unit will be assigned a grade in accordance with the limits for defects summarized as follows:

Grade assignment	Flavor and odor	Maximum number of defect points
U.S. Grade A	Good	15
U.S. Grade B	Reasonably Good	30
U.S. Grade C	Reasonably Good	40

If a sample unit has been assigned a grade for flavor and odor different than the grade indicated by the number of defect points, the sample unit grade will be the lower grade.

TABLE I—DEFECT TABLE SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Point value
Frozen Products		
(1) Dehydration:		
Each occurrence affecting 3 to 10% of surface area but readily removed by scraping.	Slight	5
Affecting more than 1% but not more than 10% of surface area and cannot be easily removed by scraping.	Moderate	16
Affecting more than 10% of surface area and cannot be easily removed by scraping.	Excessive	30
Fresh or Frozen Products		
(2) Condition of product (pertains to the entire package or container).	Slight	1
	Moderate	3
	Excessive	5
(3) Discoloration:		
1/16 sq. in. to 1 sq. in	Slight	4
Over 1 sq. in. to 2 sq. in	Moderate	9
Over 2 sq. in. and each additional complete 1 sq. in	Excessive	15
(4) Uniformity: Deviation above or below declared weight of portion—		
Weight of portion—Moderate:		
0.75 to 4.16 oz	Over ⅛ but not over ¼ oz	5
4.17 to 11.20 oz	Over ⅛ but not over ½ oz	5
11.21 to 17.30 oz	Over ⅛ but not over ¾ oz	5
Weight of portion—Excessive		
0.75 to 4.16 oz	Over ¼ oz	10
4.17 to 11.20 oz	Over ½ oz	10
11.21 to 17.30 oz	Over ¾ oz	10
Fresh or thawed products		
(5) Skinning cuts [skinless market forms only].		
1/16 sq. in. to 1 sq. in	Slight	1
Over 1 sq. in. to 2 sq. in	Moderate	3

TABLE I—DEFECT TABLE SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM—Continued

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Point value
Over 2 sq. in. and each additional complete 1 sq. in	Excessive	8
(6) Heading (H&G or H&D fish only):		
1/16 sq. in. to 1 sq. in	Slight	5
Over 1 sq. in. to 2 sq. in	Moderate	16
Over 2 sq. in. and each additional complete 1 sq. in	Excessive	30
(7) Evisceration:		
1/16 sq. in. to 1 sq. in	Slight	5
Over 1 sq. in. to 2 sq. in	Moderate	16
2 sq. in. or over	Excessive	30
(8) Fins:		
Up to 1 sq. in	Slight	1
Over 1 sq. in. to 2 sq. in	Moderate	5
Over 2 sq. in	Excessive	10
(9) Bones (including pin bone):		
Bones: 3/16 in. long or 1/32 in. wide	Each occurrence	5
Bone chip: 1/16 in. long	Each occurrence	5
Excessive: 1 9/16 in. long by 3/8 in. wide rectangle	Each occurrence	10
(10) Skin (skinless market forms only): Over 1/2 sq. in. to 1 sq. in	Each occurrence	5
(11) Bloodspots, bruises: Over 1/2 sq. in. to 1 sq. in	Each occurrence	5
(12) Foreign matter: Harmless material	Each occurrence	4
Cooked products		
(13) Texture	Moderate Excessive	5 16

§ 267.105 Tolerances for lot certification.

(a) The grade assigned to a lot is the grade indicated by the majority of the sample unit grades provided that the number of sample units in the next lower grade does not exceed the acceptance number as given in the sampling plans contained in § 260.61 of this chapter. All of the sample units must meet the provisions of § 260.21 of this chapter. In § 260.21, the 4 score points are additive, not subtractive.

(b) The grade assigned to a lot is one grade below the majority of all the sample unit grades if either:

(1) The number of sample units in the next lower grade does exceed the acceptance number as given in the sampling plans contained in § 260.61 of this chapter, or

(2) The grade of any one of the sample units is more than one grade below the majority of all the sample unit grades.

§ 267.106 Hygiene.

Products will be processed in official establishments as defined in § 260.6 of this chapter and maintained in accordance with §§ 267.101 to 267.107 of this part and of the good manufacturing practice regulations contained in 21 CFR Part 110.

§ 267.107 Methods of analysis.

Product samples will be analyzed in accordance with the "Official Methods of Analysis of the Association of Official Analytical Chemists", (AOAC), Fourteenth Edition (1984), section 18.004 (page 331) and sections 32.059 and 32.060 (page 613) which are incorporated by reference. Copies of the AOAC methods may be obtained from AOAC, 1111 North Nineteenth Street, Arlington, VA 22209 and are available for inspection at the Office of the Federal Register, 1100 L Street, Room 8401 Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on November 4, 1987. These methods are incorporated as they exist on the date of this approval. A notice of any change in the sections of the AOAC methods cited herein will be published in the FEDERAL REGISTER.

SUBCHAPTER H—TUNA FISHERIES

PART 280—PACIFIC TUNA FISHERIES

Sec.
280.1 Purpose and scope.
280.2 Definitions.
280.3 Recordkeeping and written reports.
280.4 Persons and vessels exempted.

AUTHORITY: 64 Stat. 777, as amended October 15, 1962, 76 Stat. 923; 16 U.S.C. 951-961.

§ 280.1 Purpose and scope.

The regulations in this part implement the Commission's recommendations for the conservation of yellowfin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

[53 FR 24644, June 29, 1988]

§ 280.2 Definitions.

The terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commission means the Inter-American Tropical Tuna Commission established pursuant to the Convention.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

Mingled species means—

(a) Any species of billfish or shark; or

(b) The following species of the family Scombridae: Skipjack (*Genus euthynnus*), bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*) albacore (*Thunnus alalunga*), or Pacific bonito (*Sarda chiliensis*).

Yellowfin tuna means the species *Thunnus albacares*.

[49 FR 15209, Apr. 18, 1984. Redesignated and amended at 53 FR 24644, June 29, 1988]

§ 280.3 Recordkeeping and written reports.

(a) The master or other person in charge of a fishing vessel or a person authorized in writing to serve as the agent for either person must:

(1) Keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish aboard by species. The record and bridge log maintained at the request of the Commission shall be sufficient to comply with this paragraph provided the items of information specified are accurately entered in the log.

(b) Any authorized officer has the power to inspect without warrant or other process, at any reasonable time, the records and logs of any fishing vessel which are required by § 280.17(a)(1).

[49 FR 15209, Apr. 18, 1984. Redesignated at 53 FR 24644, June 29, 1988]

§ 280.4 Persons and vessels exempted.

Nothing contained in this part applies to:

(a) Any person or vessel authorized by the Commission, the Assistant Administrator, or any State of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

[49 FR 15209, Apr. 18, 1984. Correctly redesignated and amended at 53 FR 27693, July 22, 1988]

PART 281—RESTRICTIONS ON TUNA IMPORTS

Sec.

281.1 Definitions.
281.2 Basis and purpose.
281.3 Species subject to regulation.
281.4 Species under investigation by the Commission.
281.5 Investigations authorized.
281.6 Publication of findings.
281.7 Proof of admissibility.
281.8 Removal of import restrictions.

AUTHORITY: Sec. 6, 64 Stat. 778, as amended; 16 U.S.C. 955.

SOURCE: 31 FR 16096, Dec. 15, 1966, unless otherwise noted.

§ 281.1 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean and to include:

(a) *United States.* All areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(b) *Convention.* The Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica (1 U.S.T. 230).

(c) *Commission.* The Inter-American Tropical Tuna Commission established pursuant to the Convention.

(d) *Bureau Director.* The Director of the Bureau of Commercial Fisheries, Fish and Wildlife Service, U.S. Department of the Interior.

(e) *Regulatory area.* All waters of the eastern Pacific Ocean bounded by the mainland of the Americas and the following lines: Beginning at a point on the mainland where the parallel of 40 degrees north latitude intersects the coast; thence due west to the meridian of 125 degrees west longitude; thence due south to the parallel of 20 degrees north latitude; thence due east to the meridian of 120 degrees west longitude; thence due south to the parallel of 5 degrees north latitude, thence due east to the meridian of 110 degrees west longitude; thence due south to the parallel of 10 degrees south latitude; thence due east to the meridian of 90 degrees west longitude; thence due south to the parallel of 30 degrees south latitude; thence due east to a point on the mainland where the parallel of 30 degrees south latitude intersects the coast.

(f) *Yellowfin tuna.* Any fish of the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

(g) *Other tuna fishes.* Those species (and none other) of the family Scombridae which are known as:

(1) Albacore—*Thunnus alalunga* (synonomy: *Thunnus germo*).

(2) Bigeye—*Thunnus obesus* (synonomy: *Parathunnus sibi*).

(3) Bluefin—*Thunnus Thynnus* (synonomy: *Thunnus saliens*).

(4) Skipjack—*Euthynnus pelamis* (synonomy: *Katsuwonus pelamis*).

(h) *Fishing vessel.* Every kind, type or description of watercraft (other than purse seine skiffs) used in or outfitted for catching or processing fish or transporting fish from fishing grounds.

(i) *Person.* Individual, association, corporation or partnership.

§ 281.2 Basis and purpose.

(a) At a special meeting held at Long Beach, Calif., on September 14, 1961, the Commission recommended to the Governments of Costa Rica, Ecuador, Panama, and the United States of America, parties to the Convention, that they take joint action to limit the annual catch of yellowfin tuna from the eastern Pacific Ocean by fishermen of all nations during the calendar year 1962. This recommendation was made pursuant to paragraph 5 of Article II of the Convention on the basis of scientific investigations conducted by the Commission over a period of time dating from 1951. The most recent years of this period were marked by a substantial increase in fishing effort directed toward the yellowfin tuna stocks, resulting in a rate of exploitation of these stocks greater than that at which the maximum sustainable yield may be obtained. The Commission's recommendation for joint action by the parties to regulate the yellowfin tuna fishery has as its objective the restoration of these stocks to a level of abundance which will permit maximum sustainable catch and the maintenance of the stocks in that condition in the future.

(b) At annual meetings held at Quito, Ecuador, May 16 to 18, 1962; at Panama City, Panama, April 16 to 17, 1963; at San Diego, Calif., March 18 to 19, 1964; at Mexico City, Mexico, March 23 to 24, 1965; and at Guayaquil, Ecuador, April 19 to 20, 1966, the Commission affirmed its earlier conclusions regarding the need for regulating the yellowfin tuna fishery in the eastern Pacific Ocean and at each meeting recommended to the parties to the Convention that they take joint action to:

(1) Establish a prescribed tonnage limit on the total catch of yellowfin tuna by the fishermen of all nations during each calendar year from an area of the eastern Pacific Ocean defined by the Commission:

(2) Establish open and closed seasons for yellowfin tuna under prescribed conditions;

(3) Permit the landing of not more than 15 percent (15%) by weight of yellowfin tuna among the tuna taken on a fishing trip made after the close of the yellowfin tuna fishing season; and

(4) Obtain from governments not parties to the Convention, but having vessels which operate in the fishery, cooperation in affecting the recommended conservation measures.

(c) In conformity with the provisions of section 6(c) of the Act and simultaneously with the adoption of the regulations in this part, the Secretary of the Interior has made effective Part 280 of this chapter for the purpose of carrying out the recommendations of the Commission for the conservation of yellowfin tuna in the regulatory area so far as such recommendations affect all vessels and persons subject to the jurisdiction of the United States.

(d) The yellowfin tuna stocks recommended for regulation by the Commission constitute a significant part of an international high seas fishery in which the vessels of a number of countries are engaged in varying degrees. Since some of the countries are not parties to the Convention and, therefore, have no applicable treaty obligations to fulfill, the achievement of the conservation objectives with respect to the tuna resources of the eastern Pacific Ocean is dependent upon international cooperative efforts to implement the Commission's recommendations. With a view toward encouraging effective cooperation on the part of such countries, the Tuna Conventions Act of 1950, as amended, directs that restrictions be established on the importation of certain tuna fish from any country which shall fail to take action to prevent the occurrence of certain proscribed activities. Thus, section 6(c) of the Act provides that the Secretary of the Interior, with the concurrence of the Secretary of State, shall promulgate regulations--

(1) To prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area; and

(2) To prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission.

(e) Section 6(c) of the Act further provides that "in the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the Commission and which were taken in the regulatory area."

(f) By letter of May 8, 1964, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to prescribe procedures for the establishment of restrictions on imports of tuna whenever such action shall be deemed warranted.

§ 281.3 Species subject to regulation.

The species of fish currently subject to regulation pursuant to a recommendation of the Commission within the meaning of section 6(c) of the Act is yellowfin tuna.

§ 281.4 Species under investigation by the Commission.

The species of fish currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin tuna, skipjack tuna, and bigeye tuna.

§ 281.5 Investigations authorized.

(a) The Bureau Director shall cause to be made from time to time such inquiries and investigations as may be necessary to keep himself and other persons concerned currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being carried out by countries whose vessels engage in fishing within the regulatory area. In making a finding as to whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, The Bureau Director shall take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(1) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis.

(2) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations.

(3) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulation which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations.

(4) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures.

(5) The number of vessels of the country which conduct fishing operations in the regulatory area.

(6) The quantity of species subject to regulation taken from the regulatory area by the country's vessels contrary to the Commission's conservation recommendations and its relationship to (i) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (ii) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(7) Whether or not repeated and flagrant fishing operations in the regulatory area by the vessels of the country seriously threaten the achievement of the objectives of the Commission's recommendations.

(b) Any person who shall have reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Tuna Conventions Act of 1950 as amended, are occurring or are likely to occur, may communicate his belief to the Bureau Director. Every such communication shall contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may support the belief, and such other pertinent facts as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Bureau Director of any communication submitted pursuant to paragraph (b) of this section and found to comply with the requirements of that paragraph, the Bureau Director promptly shall cause such investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigation the Bureau Director or his designated representative shall consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary shall exist, every such investigation shall be completed within 60 days following receipt of the communication.

§ 281.6 Publication of findings.

It it shall be determined on the basis of § 281.5 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States from a particular country pursuant to the provisions of section 6(c) of the Act, the Bureau Director, with the approval of the Secretary of the Interior and, when required by law, with the concurrence of the Secretary of State, shall publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry either directly or indirectly from the country named in the finding shall be denied entry unless it shall be established by satisfactory proof pursuant to § 281.7 that a particular shipment of such fish is not ineligible for entry: *Provided*, That entry shall not be denied and no such proof shall be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

§ 281.7 Proof of admissibility.

(a) For the purposes of § 281.6 of this part and section 8(c) of the Tuna Conventions Act of 1950, as amended, a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under such § 281.6 shall be deemed to be eligible for entry if the shipment is accompanied by a certificate of eligibility certifying, as may be appropriate, that the tuna in the shipment:

(1) Are not of the species specified in the published finding; (2) are of the species named in the published finding but were not taken in the regulatory area; or (3) are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

CERTIFICATE OF ELIGIBILITY

I, ————————, an authorized officer of the Government of ————————, certify that the shipment of tuna fish accompanied by this certificate, consisting of ———— (Quantity) of ———————— (Species) in ———————————— (Number and kind of packages or containers) bearing the following marks and numbers ————————————:

☐ (a) Contains no tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended. [A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.]

☐ (b) Contains tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended, but that such fish were caught in the waters of ————————————

————————————————————

(Identify area or areas in which fish were taken) by vessels subject to the jurisdiction of ———— (Country), and that none of the said fish were taken in any part of the eastern Pacific Ocean subject to conservation regulations pursuant to recommendations of the Inter-American Tropical Tuna Commission. [A certificate of authentication executed by a consular officer or consular agent of the United States must be attached.]

☐ (c) Contains tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended, but that such fish, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. [Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent of the United States and the declaration(s) required by 19 C.F.R. 10.79 must be attached.]

―――――――――――――
(Signature)

―――――――――――――
(Title)

―――――――――――――
(Address)

(b) If the tuna fish are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

――――――
―――――― ss:
――――――
――――――

I, ―――――――――― (Name of consular officer or consular agent), ―――――― (Title) of the United States of America at ―――――― (Place), duly commissioned and qualified, do hereby certify that ―――――――――― (Name of foreign official) whose true signature and official seal are, respectively, subscribed and affixed to the annexed certificate, was, on the ―――――― day of――――――, 19――, the date thereof, ――――――――, (Title of foreign official) duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the ―――――― at ―――――― this ―――――― day of ――――――, 19―.

―――――――――――――
(Signature)

―――――――――――――――――
(Name and full title of officer)

(c) If the tuna fish are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries," required by 19 CFR 10.79, must contain a further statement as follows: "We further declare that the said tuna fish were caught by use in full compliance with Part 280, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

§ 281.8 Removal of import restrictions.

Upon a determination by the Bureau Director that the conditions no longer exist which warranted the imposition of import restrictions against the country named in the finding published pursuant to § 281.6, the Bureau Director, with the approval of the Secretary of the Interior, shall publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein shall terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form of the species subject to regulation or under investigation by the Commission shall continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish which are of species under regulation and which were prohibited from entry under the prior existing import restrictions.

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PART 285—ATLANTIC TUNA FISHERIES

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AUTHORITY: 16 U.S.C. 971 *et seq.*

SOURCE: 50 FR 43398, Oct. 25, 1985, unless otherwise noted.

Subpart A—General

§ 285.1 Purpose and scope.

(a) The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971h) authorizes the Secretary to implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Secretary's authority under the Act has been delegated to the Assistant Administrator.

(b) This part implements the ICCAT recommendations for persons and vessels subject to the jurisdiction of the United States.

(c) This part does not apply to any person or vessel authorized by the Commission, the Regional Director, the Director of the Southeast Fisheries Center, or any State upon approval by the Regional Director, to engage in fishing for research purposes.

(d) Under section 9(d) of the Act, determinations made by the Assistant Administrator that the provisions of this part apply within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Texas, Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Rhode Island, Massachusetts, New Hampshire, and the Commonwealths of Puerto Rico and the Virgin Islands, and, with the exceptions of §§ 285.22 (c) and (d), 285.23 (a) and (b) and 285.25 within the territorial sea of the United States adjacent to, and within the boundaries of, the State of Maine, continue in effect.

§ 285.2 Definitions.

The terms used in this part have the following meanings (definitions in the Act are repeated here to aid understanding of the rules):

Act means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971h.

Albacore means the fish species *Thunnus alalunga.*

Angling means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line which is hand held or by rod and reel made for this purpose.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic bluefin tuna means the fish species *Thunnus thynnus thynnus.* Size classes for Atlantic bluefin tuna are defined in § 285.26.

Atlantic bonito means the fish species *Sarda chiliensis* or *Sarda sarda.*

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bigeye tuna means the fish species *Thunnus obesus.*

Buy-boat means any vessel or other means of conveyance used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for any tuna.

Cargo vessel means any fishing vessel used for transporting fish or fish products.

Center Director means the Center Director, Southeast Fisheries Center, 75 Virginia Beach Drive, Miami, FL 33149.

Commercial activity means any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species and activities conducted for the purpose of facilitating such buying and selling.

Commission means the International Commission for the Conservation of Atlantic Tunas established under Article III of the Convention.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Dealer means any person who engages in a commercial activity with respect to a regulated species or parts thereof.

Dressed weight means the weight of a fish after it has been gilled, gutted, beheaded, and definned.

Fish or *fishing* means the catching or fishing for, or the attempted catching or fishing for, any species of fish covered by the Convention, or any activities in support of fishing.

Fishing trip means the time period between when a fishing vessel departs from port to carry out fishing operations and the time such vessel returns to port or offloads any of its catch.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing week means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time on the following Saturday.

Fork length means a measurement of the length of Atlantic bluefin tuna taken in a straight line along the middle of the lateral surface from the tip of the snout to the fork of the tail.

Handgear means handline, harpoon, or rod and reel.

Handline or *handline gear* means fishing gear which is released by hand and consists of one main line of variable length to which is attached one or two leaders and hooks. Handlines are retrieved only by hand, and not by mechanical means.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick which is propelled only by hand, and not by mechanical means.

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Longline or *longline gear* means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or groundline with three or more gangions and hooks. A longline may be retrieved by hand or mechanical means.

Metal tag means the flexible, self-locking ribbon of metal issued by the NMFS for the identification of Atlantic bluefin tuna under § 285.30.

Metric ton (mt) means 2204.6 pounds (1000 kilograms).

NMFS means the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce.

Owner means, with respect to any vessel

(a) Any person who owns that vessel in whole or part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Person means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

Plastic tag means the plastic or combination plastic and metal marker issued for the tag and release program under § 285.27

Purse seining means fishing for or catching a regulated species by means of an encircling net and associated gear.

Regional Director means

(a) For purposes of Atlantic bluefin tuna, the Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, MA 01930-3799; and

(b) For purposes of yellowfin tuna, bigeye tuna, skipjack tuna, and albacore, the Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Regulated species means albacore, Atlantic bluefin tuna, bigeye tuna, skipjack tuna, or yellowfin tuna.

Regulatory area means all waters of the Atlantic Ocean including adjacent seas, except the waters over which the individual States exercise fishery management jurisdiction unless the Assistant Administrator has determined otherwise in accordance with this part, as noted in § 285.1(d).

Reporting week means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time the following Saturday.

Round or *round weight* means a fish or the weight of a fish before gilling, gutting, beheading, and definning.

Secretary means the Secretary of Commerce or an individual to whom appropriate authority has been delegated.

Short ton (st) means 2,000 pounds (907 kilograms).

Skipjack tuna means the fish species *Katsuwonus (Euthynnus) pelamis*.

State means any State of the United States, the District of Columbia, the Commonwealths of Puerto Rico and the Virgin Islands, and territories and possessions of the United States.

Tuna means albacore, Atlantic bluefin tuna, Atlantic bonito, bigeye tuna, skipjack tuna or yellowfin tuna.

Yellowfin tuna means the fish species *Thunnus albacares*.

[50 FR 43398, Oct. 25, 1985, as amended at 51 FR 26899, July 28, 1986; 52 FR 25011, July 2, 1987; 53 FR 24645, June 29, 1988]

§ 285.3 Prohibitions.

It is unlawful.

(a) For any person in charge of a fishing vessel or for any fishing vessel subject to the jurisdiction of the United States to engage in fishing or to land any tuna in violation of these rules.

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which the person knows, or should have known, was taken or retained contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel which took the fish.

(c) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish reports required by this part.

(d) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to obstruct or to refuse to allow any authorized officer to enter the dealer's premises or to board the fishing vessel to search or inspect its catch, equipment, books, documents, records, or other articles, or to question the persons in the dealer's premises or aboard the fishing vessel under the provisions of this part.

(e) For any person to import from any country any regulated species in any form subject to regulation under a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry under this part.

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, or with the head removed.

§ 285.4 Facilitation of enforcement.

(a) The Secretary, the Secretary of the Department in which the U.S. Coast Guard is operating, and the U.S. Customs Service will enforce jointly this part and the provisions of the Act.

(b) Enforcement agents of NMFS will enforce provisions of this part and the Act on behalf of the Secretary and may take any actions authorized with respect to enforcement. By agreement, the Secretary may utilize the personnel, services, and facilities of any other Federal Agency to enforce these rules and the Act. By agreement, the Secretary also may designate personnel of a State to enforce these rules and the Act.

(c) The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Act and this part.

(d) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals, "L" (. — . .)[1] means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *Prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(e) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

---

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(f) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "**AA**" repeated (.- .-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "**RY-CY**" (.-. -.— -.-. -.—) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "**SQ3**" (... —.- ...—) means "you should stop or heave to; I am going to board you."

[50 FR 43498, Oct. 25, 1985; 50 FR 45828, Nov. 4, 1985, as amended at 53 FR 24645, June 29, 1988]

§ 285.5 Civil procedures.

(a) The method for assessment of civil penalties for violation of these rules or the Act must be in accordance with the procedures set forth in 15 CFR Part 904.

(b) In view of the perishable nature of tuna when not processed otherwise than by chilling or freezing, authorized officers may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen tunas that may be seized and forfeited under the Act and this part.

(c) The purchaser must remit the proceeds of any sale made under paragraph (b) of this section to the Regional Director. The Regional Director will deposit and retain the proceeds in the Suspense Account of NMFS (Account No. DO 6875—Phase 19) after deducting the reasonable cost of the sale, if any, pending judgement of the court or other disposition of the case.

[50 FR 43398, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988]

§ 285.6 Civil penalities.

Any person who:

(a) Violates any provisions of § 285.3 (a), (b), or (f) of this part will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for any subsequent violation;

(b) Violates any provision of § 285.3 (c) or (d) of this part will be assessed a civil penalty of not more than $1,000 for a first violation and a civil penalty of not more than $5,000 for any subsequent violation; or

(c) Violates any provision of § 285.3(e) will be assessed a civil penalty of not more than $100,000.

[50 FR 43398, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987]

Subpart B—Atlantic Bluefin Tuna

(*Thunnus thynnus thynnus*)

SOURCE: 50 FR 43400, Oct. 25, 1985, unless otherwise noted.

§ 285.20 Fishing seasons.

(a) *Commencement.* Fishing in the regulatory area for Atlantic bluefin tuna will begin

(1) On January 1 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(d),

(ii) For anglers fishing for young school, school, and medium Atlantic bluefin tuna under the quota specified in § 285.22(e),

(iii) For vessels permitted in the Incidental Catch category fishing under the quota specified in § 285.22(f), and

(iv) For anglers participating in the tag and release program under § 285.27.

(2) On June 1 of each year:

(i) For vessels permitted in the General category fishing under the quota specified in § 285.22(a), and

(ii) For vessels permitted in the Harpoon Boat category fishing under the quota specified in § 285.22(b).

(3) On August 15 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(c).

(ii) [Reserved]

(4) Consistent with the Convention, the Act and this part, the Assistant Administrator may change the commencement date under this section for any vessel permit category or person (angler) if the Assistant Administrator determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being caught, based upon historical catch data or other relevant information. The Assistant Administrator will publish a notice in the FEDERAL REGISTER of any change in the commencement date(s) for fishing under this section at least 60 days before commencement of the affected fishery.

(b) *Closure.* (1) The Assistant Administrator will monitor catch and landing statistics of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22, and will publish a notice in the FEDERAL REGISTER stating that fishing for or retaining Atlantic bluefin tuna under that quota must cease on that date at a specified hour.

(2) Angling for Atlantic bluefin tuna under a tag and release program under § 285.27 may continue even after fishing for a quota has ceased.

(3) A vessel permitted in the Purse Seine category may fish under the quotas specified in § 285.22 (c) and (d) only until the allocation(s) assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation for a particular size class of Atlantic bluefin tuna, a vessel will be deemed to have been given notice that the fishery for such tuna is closed to that vessel.

(c) *State actions.* Nothing in this section may be construed to invalidate any more restrictive commencement or closure date established by any State in waters under its jurisdiction.

[50 FR 43400, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988]

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel which fishes for or takes Atlantic bluefin tuna, except vessels being used by anglers fishing for young school, school, or medium Atlantic bluefin tuna under § 285.24(c), must have an appropriate permit issued under this section.

(b) *Categories of permits.* The Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. Anglers also may fish for young school, school, and medium Atlantic bluefin tuna from a vessel that has a permit for other types of fishing, but anglers will remain subject to provisions of this subpart applicable to angling. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22 (c) and (d) only to owners of those purse seine vessels, or their replacements, which were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel which was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the length of the vessel, the tonnage (if known), the area to be fished, and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year regardless of any change in the vessel's ownership.

(d) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under this section remains valid until it is suspended, revoked, or expires. Except with respect to purse seine permits, a permit issued under this section expires when the owner or name of the vessel changes.

(f) *Alteration* A permit issued under this section which is substantially altered, erased, or mutilated is invalid.

(g) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(h) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the vessel and/or owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried aboard the vessel at all times. The permit must be displayed for inspection upon request of any authorized officer or any employee of the NMFS designated by the Regional Director for such purpose.

(j) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit issued under this section.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing to the Regional Director.

(Approved by the Office of Management and Budget under OMB control number 0648-0097)

§ 285.22 Quotas.

The total annual amount of Atlantic bluefin tuna which may be caught and retained by persons and vessels subject to U.S. jurisdiction in the regulatory area is 1,529 st (1,387 mt), subdivided as follows:

(a) *General.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the General category under § 285.21(b) is 650 st (590 mt). If the Assistant Administrator determines (based on dealer reports, availability of giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 50 st or the maximum reported landings in the identified area in any of the preceding three years. The daily catch limit for the identified area will be set at one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator will publish a notice of any allocation and its basis in the FEDERAL REGISTER.

(b) *Harpoon-boat.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 60 st (54 mt).

(c) *Purse Seine—Giants.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 325 st (295 mt).

(d) *Purse Seine—Young School and School fish.* The total amount of Atlantic bluefin tuna less than 120 cm fork length (47 inches) which may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 100 st (91 mt). See § 285.23(b) for further clarification.

(e) *Angling.* The total amount of young school, school, and medium Atlantic bluefin tuna which may be caught and retained in the regulatory area by anglers is 139 st (126 mt). No more than 89 st (81 mt) of this quota may be fish less than 120 cm (47 inches) fork length.

(f) *Inc dental.* The total amount of Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 151 st (137 mt). This quota is further subdivided as follows:

(1) 145 st (132 mt) for longline vessels. No more than 115 st (104 mt) may be taken in the area south of 36°00′ N. latitude.

(2) 6 st (5 mt) for vessels fishing for species of fish other than tuna.

(g) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna which will be held in reserve for inseason adjustments is 104 st (94 mt). The Assistant Administrator may allocate any portion (from zero to 100 percent) of this amount to any segment or segments of the fishery. The Assistant Administrator will publish a notice of allocation of any inseason adjustment amount in the FEDERAL REGISTER before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular gear segment of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(h) The catching or retention of young school, school, or medium Atlantic bluefin tuna is prohibited except as allowed by paragraphs (d), (e), and (f) of this section.

§ 285.23 Incidental catch.

(a) Subject to the quota in § 285.22(c), purse seine vessels permitted in the purse seine category under § 285.21 and fishing for giant Atlantic bluefin tuna may catch incidentally, during any fishing trip, Atlantic bluefin tuna with a fork length less than 77 inches, provided that the total amount of such tuna taken does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna aboard the vessel at the end of each fishing trip.

(b) Subject to the quota in § 285.22(d) and individual vessel allocations, purse seine vessels permitted in the purse seine category under § 285.21 and fishing for tunas other than Atlantic bluefin tuna may catch incidentally and retain, during any fishing trip, Atlantic bluefin tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 10 percent by weight of all other tuna species aboard the vessel at the end of each fishing trip. Any vessel that has not taken its allocation under § 285.22(d) at the seasonal termination of the vessel's fishing for species of tuna other than Atlantic bluefin tuna, may add the remainder of its allocation to the vessel's allocation of giant Atlantic bluefin tuna under § 285.22(c)

(c) *Attribution.* Atlantic bluefin tuna caught incidentally by purse seine vessels fishing for an allocation of a particular size class of Atlantic bluefin tuna will be attributed to that vessel's allocation for such size class Atlantic bluefin tuna.

(d) *Herring, mackerel, and menhaden purse seine vessels and vessels using fixed gear other than longlines or traps (pounds, weirs, and gill-nets).* Subject to the quotas in § 285.22, any person operating a vessel fishing with these types of gear principally for species of fish other than tuna and possessing an Incidental Catch permit issued under § 285.21 may catch, during any fishing trip, Atlantic bluefin tuna of any size class, provided that, the total amount of Atlantic bluefin tuna taken does not exceed two percent, by weight, of all other fish aboard the vessel at the end of each fishing trip.

(e) *Traps.* Subject to the quotas in § 285.22, any person operating a vessel possessing an Incidental Catch permit issued under § 285.21 which catches Atlantic bluefin tuna incidentally while fishing with traps, may retain Atlantic bluefin tuna, provided, that such tuna do not exceed two percent, by weight, of the total amount of all other fish species caught within the preceding 30-day period.

(f) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental catch permit issued under § 285.21 may retain or land Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(1) Two fish per vessel per trip retained or landed south of 36°00′ N. latitude, and

(2) Two percent by weight of all other fish on board the vessel at the end of each fishing trip, retained or landed north of 36°00′ N.

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear in the Gulf of Mexico and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report within 24 hours of landing any giant Atlantic bluefin tuna to the nearest NMFS enforcement office, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

[50 FR 43400, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987]

§ 285.24 Catch limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b), may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator, on or about September 1, may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the FEDERAL REGISTER of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit in effect at that time.

(b) Vessels permitted in the Harpoon Boat category are not restricted in their catch limit of giant Atlantic bluefin tuna.

(c) Persons angling in the regulatory area may catch and retain no more than four Atlantic bluefin tuna other than giant Atlantic bluefin tuna each day, only one of which may be a medium: provided that no more than four medium Atlantic bluefin tuna per day may be caught and retained per vessel for vessels having four or more anglers aboard.

§ 285.25 Purse seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a vessel with a permit issued under § 285.21(b) conducting a directed fishery for Atlantic bluefin tuna with nets, other than a trap net, must use a purse seine net with a mesh size equal to or smaller than 4.5 inches in the main body (stretched when wet) and which has at least 24-count thread throughout the net.

(b) *Exemption.* The Regional Director may exempt any person from the mesh restrictions in paragraph (a) of this section if it is determined that the net sought to be exempted will not result in significant injury or mortality to Atlantic bluefin tuna which are encircled by the net but manage to escape.

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or offloading. Only calls made to 617-563-5721 will meet this notification requirement and result in the assignment of an agent for an inspection. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transport from the area of offloading.

(d) *Vessel allocations.* (1) Purse seine vessel permit holders must apply for an allocation of Atlantic bluefin tuna from the quotas specified in § 285.22 (c) and (d). The permit holder must apply for this allocation in writing to the Regional Director by April 15. The permit holder must specify the particular size class or classes of Atlantic bluefin tuna for which the vessel will fish. The owner must supply documentation of the vessel's stockholders, owners, partners, or association structure.

(2) The Regional Director will review these applications for allocations of Atlantic bluefin tuna on or about May 1, and will make equal allocations of the available size classes of Atlantic bluefin tuna among the vessels permitted under § 285.21(b). Such allocations are freely transferrable among purse seine vessel permit holders. Any purse seine vessel permit holder intending to fish for more than one allocation in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their allocation to another purse seine vessel permit holder must not fish their permitted vessel in any fishery in which Atlantic bluefin tuna might be caught.

[50 FR 43400, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987]

§ 285.26 Size classes.

For any Atlantic bluefin tuna which is landed with the head removed, it is a rebuttable presumption for purposes of this subpart that the tuna, when caught, fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from the forwardmost part of the beheaded fish to the fork of the tail. The fork length measurement will be the sole criterion for determining the size class of an individual Atlantic bluefin tuna. Approximate round weights are given for illustrative purposes only.

Original size class (Fork length)	Approximate round weights	Length with head off
Young school tuna: Less than 26 inches (66 cm)	Less than 14 pounds	Less than 18 inches (46 cm).
School tuna: Equal to 26 inches (66 cm) but less than 57 inches (145 cm).	From 14 pounds but less than 135 pounds.	18 inches (46 cm) but less than 40 inches (102 cm).
Medium tuna: Equal to 57 inches (145 cm) but less than 77 inches (196 cm).	From 135 pounds but less than 310 pounds.	40 inches (102 cm) but less than 54 inches (137 cm).
Giant tuna: 77 inches (196 cm) or more	310 pounds or more	54 inches (137 cm) or more.

§ 285.27 Tag and release program.

Notwithstanding other provisions of these rules, an angler may fish for Atlantic bluefin tuna under a tag and release program, provided the angler tags all Atlantic bluefin tuna so caught with plastic tags issued under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. To participate in this program, an angler must obtain plastic tags, reporting cards, and detailed instructions for their use by writing to the Cooperative Game Fish Tagging Program, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149-1099.

§ 285.28 Dealer permits.

(a) *General.* A dealer purchasing or receiving Atlantic bluefin tuna from any person or vessel which catches such tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (l) of this section.

(b) *Application.* An applicant must apply for a dealer permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address, and telephone number of the applicant.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR Part 904.

(j) *Fees.* No fee is required for any permit issued under this section.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Buy-boats.* Each buy-boat must have a dealer permit issued under this section. The Regional Director will not issue a dealer permit under this section for a buy-boat operation to any vessel which has a valid fishing permit issued under § 285.21. The Regional Director will not issue a dealer permit to a buy-boat unless the owner or operator of the buy-boat agrees in writing to allow an individual authorized by the Regional Director to accompany the buy-boat on any trip to observe operations. The Regional Director will provide reasonable notice to the owner or operator of any buy-boat that an individual will be placed aboard. Failure to allow an authorized individual to be placed aboard following reasonable notice voids the permit. The Regional Director will reimburse the owner of any buy-boat for any expenses which the Regional Director determines to be reasonable and which are related directly to the placement of an individual aboard that buy-boat.

[50 FR 43400, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988]

§ 285.29 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 285.28:

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by NMFS, within two days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: the number of tuna purchased or received; location where each tuna was caught; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); date; metal tag numbers (where applicable); round or dressed weight and fork length (by individual tuna); and any other information requested by the Regional Director. Also, dealers using buy-boats, in addition to the information required above, must include the precise time when any tuna were received aboard the buy-boat;

(c) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic bluefin tuna;

(d) Must retain in his/her possession a copy of each daily and weekly report for a period of two years from the date on which it was submitted to the Regional Director.

(e) Each operator of a buy-boat, in addition to the above must notify the Regional Director of any offloading, and must request a vessel inspection at least six hours before such offloading by calling 617-281-3600, extension 252, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 617-992-7711. In making the request for inspection, the owner or operator of the buy-boat or a designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

[50 FR 43400, Oct. 25, 1985, as amended at 51 FR 28241, Aug. 6, 1986; 53 FR 24645, June 29, 1988]

§ 285.30 Metal tags.

(a) *Issuance of tags.* The Regional Director will issue numbered metal tags to each person receiving a dealer's permit under § 285.28.

(b) *Transfer of tags.* Tags issued under this section are not transferable.

(c) *Affixing tags.* (1) A dealer or agent must affix a metal tag to each medium or giant Atlantic bluefin tuna immediately upon its offloading from a vessel. The metal tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are Portland, Maine (207-780-3241); Otis Air Force Base, Massachusetts (617-563-5721); Upton, New York (516-282-3267); Miami, Florida (305-536-4323); St. Petersburg, Florida (813-893-3841); New Orleans, Louisiana (504-589-4538); or Corpus Christi, Texas (512-888-3360).

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag must be attached to the outside of the package or container and the tag number must be written legibly and indelibly on the outside of any package or container.

[50 FR 43400, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987]

§ 285.31 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Fish for or catch Atlantic bluefin tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for or catch Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

(3) Fish for, catch, or possess Atlantic bluefin tuna in excess of the quotas specified in § 285.22 except under the provisions of § 285.27;

(4) Fish for, catch, or possess Atlantic bluefin tuna in excess of the catch limits specified in § 285.24 except under the provisions of § 285.27;

(5) Fish for or catch Atlantic bluefin tuna in excess of any vessel allocation made under § 285.25(d);

(6) Fish for or catch Atlantic bluefin tuna in a directed fishery with purse seine nets without an allocation made under § 285.25(d);

(7) Fish for or catch Atlantic bluefin tuna in a directed fishery with nets other than those specified in § 285.25;

(8) For any vessel other than a vessel holding a purse seine permit issued under § 285.21(b), to approach to within 100 yards (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic bluefin tuna;

(9) Retain or land Atlantic bluefin tuna in excess of the incidental catch provisions under § 285.23;

(10) Land any Atlantic bluefin tuna in forms other than round, or other than with the head removed;

(11) Retain any Atlantic bluefin tuna caught under the tag and release program allowed under § 285.27;

(12) Purchase, receive, or transfer Atlantic bluefin tuna from any person or vessel without a valid dealer permit issued under § 285.28(a);

(13) Purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 285.28;

(14) Sell, offer for sale, or tranfer any Atlantic bluefin tuna to any person or vessel other than to a person or vessel with a permit issued under § 285.28;

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally in the Gulf of Mexico with rod and reel gear under § 285.23(g);

(16) Engage in fishing with a vessel holding a permit under § 285.21 unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings under control (secured to the catching vessel or abroad) any Atlantic bluefin tuna with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

(17) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna which will not be retained;

(18) Fail to affix immediately to any medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered metal tag when the tuna has been received or purchased by that person for a commercial purpose from any person or vessel having caught such tuna;

(19) Remove any metal tag affixed to an Atlantic bluefin tuna under § 285.30 before removal is allowed under that section, or fail to write the tag number on the shipping package or container as prescribed by that section;

(20) Purchase or transport with a buy-boat any Atlantic bluefin tuna captured incidentally by longlines;

(21) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic bluefin tuna without first requesting an inspection of the vessel in accordance with § 285.25;

(22) Fail to report the catching of any Atlantic bluefin tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization;

(23) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(24) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic bluefin tuna required by this subpart;

(25) Make any false statement, oral or writtten, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic bluefin tuna;

(26) Fish for or catch Atlantic bluefin tuna with longline gear except as provided in § 285.23(f);

(27) Fish for or catch Atlantic bluefin tuna with longline gear, or while having longline gear on board, if the vessel is permitted in the General or Harpoon Boat category under § 285.21;

(28) Fish for or catch young school, school, and medium-sized Atlantic bluefin tuna with gear other than hook and line, which is hand held or rod and reel made for this purpose or except as allowed by § 285.23 (a) through (f); or

(29) Use or possess handline or harpoon flotation gear which is not marked in accordance with § 285.33, or is marked with the Atlantic bluefin tuna permit number of another vessel.

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this subpart, the Act, or any other rules promulgated under the Act.

[50 FR 43400, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987; 53 FR 24645, June 29, 1988]

§ 285.32 Civil penalties.

(a) Any person who violates § 285.31(a) (1) through (21) inclusive, or (a) (24) through (29), inclusive, will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(b) Any person who violates § 285.31(a) (22) or (23) will be assessed a civil penalty of not more than $1,000, and a civil penalty of not more than $5,000 for a subsequent violation.

(c) Any person who violates § 285.31(b) will be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

§ 285.33 Gear identification.

Any flotation device attached to handline or harpoon gear must be marked with the Atlantic bluefin tuna permit number of the vessel from which it is used. The required markings must be permanently affixed and at least one inch in height in block Arabic numerals of a color that contrasts with the background color of the flotation device.

Subpart C—Yellowfin Tuna (*Thunnus albacares*) and Bigeye Tuna (*Thunnus obesus*)

§ 285.50 Authorized fishing.

Except as provided in § 285.52, fishing in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna that weigh seven pounds round weight (3.2 kg.) or more.

[46 FR 3026, Jan. 13, 1981, as amended at 51 FR 8324, Mar. 11, 1986]

§ 285.51 Open and closed seasons. [Reserved]

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.52 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States may take yellowfin tuna or bigeye tuna or both that weigh less than seven pounds round weight incidental to authorized fishing in the regulatory area for yellowfin tuna or bigeye tuna with the following provision. Landing of incidental catch must not exceed 3 percent by weight per trip of all yellowfin tuna and bigeye tuna weighing seven pounds or more.

[46 FR 3026, Jan. 13, 1981, as amended at 53 FR 24645, June 29, 1988]

§ 285.53 Recordkeeping.

(a) Any person in charge of a fishing vessel, or any master or other person in charge of a fishing vessel subject to the jurisdiction of the United States or any person as may be authorized in writing to serve as the agent of such person or master, must:

(1) Keep an accurate log of all operations conducted from the vessel, entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of tuna aboard by species. The record and bridge log shall be sufficient to comply with this paragraph, provided however, that the items of information specified herein are fully and accurately entered in such log; and

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of tuna made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of tuna sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. In addition, any vessel landing its catch in California may satisfy the requirements of this paragraph by submitting an official copy of the California fish ticket. Such sale and delivery reports must be delivered or mailed to the Regional Director within 72 hours after weighout has been completed.

(b) Any person authorized to carry out enforcement activities under the Act or these regulations has power, without warrant or other process, to inspect, at any reasonable time, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 53 FR 24645, June 29, 1988]

§ 285.54 Reporting requirements.

(a) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to Puerto Rico or to any other U.S. Port for unloading, must report to the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. In addition, any person in charge of a fishing vessel or any Master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish aboard, must notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report must include the name of the reporting vessel, the tonnage by species aboard, and whether the fish were caught in Pacific or Atlantic waters.

(b) All such fishing vessels entering or leaving the regulatory area via the Panama Canal are subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals may be removed only by a designated agent of the NMFS upon the arrival at point of sale or delivery.

(c) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, must notify the Regional Director not less than 48 hours prior to any transfer of yellowfin tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports must include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(d) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States is a prohibited act within the meaning of § 285.3 of this part.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 53 FR 24645, June 29, 1988]

Subpart D—Restrictions on Tuna Imports

§ 285.80 Basis and purpose.

(a) The stocks of Atlantic tunas under investigation and regulation by the Commission represent the concern of a number of countries interested in the conservation of such stocks. In order to assure that the achievement of the conservation objectives of the Commission are fulfilled the Act provides for certain restrictions on the importation of Atlantic tunas. Pursuant to section 6(c) of the Act, the Secretary, with the concurrence of the Secretary of State, is directed to promulgate regulations to prohibit:

(1) The entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(2) The entry into the United States, from any country when vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area;

(3) The entry into the United States, from any country when vessels of such country engage in repeated and flagrant fishery operations in the regulatory area which seriously threaten the achievement of the objectives of the Commission's recommendations, of fish in any form of these species which are under investigation by the Commission and which were taken from the regulatory area.

(b) By letter of February 18, 1976, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to proscribe procedures for the establishment of restrictions on imports of tuna and tuna-like fish whenever such action shall be deemed warranted.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.81 Species subject to regulation.

The species of tuna currently subject to regulation by recommendation of the Commission within the meaning of section 6(c) are yellowfin tuna, bigeye tuna, and Atlantic bluefin tuna.

[46 FR 3026, Jan. 13, 1981]

§ 285.82 Species under investigation by the Commission.

Those species of tuna currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin, Atlantic bluefin, skipjack, albacore, bigeye and Atlantic bonito, and billfishes.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.83 Investigations authorized.

(a) The Assistant Administrator will make, from time to time, such inquiries and investigations as may be necessary to keep himself and other interested persons currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations concerning those activities which are being carried out by foreign countries whose vessels engage in fishing within the regulatory area. In making a finding, as to:

(1) Whether or not fish in any form of those species which are subject to regulation by the Commission are being taken from the regulatory area in a manner or under such circumstances as would tend to diminish effectiveness of the conservation recommendations of the Commission; or

(2) Whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such a manner or under such circumstances that would tend to

diminish the effectiveness of the conservation recommendations of the Commission; or

(3) Whether or not a country is condoning the use of vessels in repeated and flagrant fishing operations which seriously threaten the achievement of the objectives of the commissions recommendations, the Assistant Administrator will take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(i) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis;

(ii) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations;

(iii) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulations which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations;

(iv) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures;

(v) The number of vessels of the country which conduct fishing operations in the regulatory area;

(vi) The quantity of species subject to regulation taken from the regulatory area by the Country's vessels contrary to the Commission's conservation recommendations and its relationship to (A) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (B) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(b) Any person who has reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Act, are occurring or are likely to occur, may communicate his belief to the Assistant Administrator. Every such communication must contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Assistant Administrator of any communication submitted pursuant to paragraph (b) of this section and upon a finding that the communication complies with the requirements of that paragraph, the Assistant Administrator will promptly conduct an investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigations the Assistant Administrator or his designated representative will consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary exists every such investigation will be completed within 60 days following receipt of the communication.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988]

§ 285.84 Publication of findings.

If it is determined on the basis of § 285.83 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States under section 6(c) of the Act, the Assistant Administrator with the approval of the Secretary of the Commerce and with the concurrence of the Secretary of State, will publish a finding to that effect in the Federal Register. Effective upon the date of publication of such finding in the Federal Register every shipment of fish in any form of the species found to be ineligible will be denied entry unless it is established by satisfactory proof pursuant to § 285.85 that a particular shipment of such fish is not ineligible for entry: *Provided,* That entry will not be denied and no such proof will be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988; 53 FR 27798, July 22, 1988]

§ 285.85 Proof of admissibility.

(a) For the purposes of § 285.83 of this part and section 6(c) of the Act a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under § 285.84 is eligible for entry if the shipment is accompanied by a certificate of eligibility certifying as may be appropriate, that the fish in the shipment:

(1) Are not of the species specified in the published finding;

(2) Are of the species named in the published finding but were not taken in the regulatory area; or

(3) Are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

Certificate of Eligibility

I, ———, an authorized officer of the Government of ———, certify that the shipment of tuna accompanied by this certificate, consisting of ——— (quantity) of ——— (Species) in ————————— (Number and kind of packages or containers bearing the following marks and numbers.)

☐ (a) Contains no tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975. (A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.)

☐ (b) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna were caught in the waters of————————————— (Identify area or areas in which tuna were taken) by vessels subject to the jurisdiction of ————————————— and that none of the tuna were taken in the Atlantic Ocean or its adjacent seas. (A certificate of authentication executed by a consular officer or consular agent of the United States must be attached.)

☐ (c) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. (Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent of the United States and the declaration(s) required by 19 CFR 10.79 and must be attached.)

——————————
Signature

——————————
Title

——————————
Address

(b) If the tuna are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

————————————————————

————————————————————

————————————————————

————————————————————

I, ————————— (Name of the consular officer or consular agent)

————————— (Title) of the United States of America at ————————— (Place), duly commissioned and qualified, do hereby certify that ————————— (Name of foreign official), whose true signature and official seal are, respectively subscribed and affixed to the annexed certificate, was, on the ——— day of ———, 19—, the date thereof, ——————— (Title of foreign official), duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the ——————————— this day of ————————19—.

———————————
Signature

———————————————————
(Name and full title of officer)

(c) If the tuna are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries", required by 19 CFR 10.79 must contain a further statement as follows: "We further declare that the said tuna were caught by us in full compliance with Part 285, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978; and amended at 53 FR 24645, June 29, 1988]

§ 285.86 Removal of import restrictions.

Upon a determination by the Assistant Administrator that the conditions no longer exist which warranted the imposition of import restrictions in the finding published pursuant to § 285.84 the Assistant Administrator, with the approval of the Secretary and the concurrence of the Secretary of State, will publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein will terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form that was subject to the finding published pursuant to § 285.84 will continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish taken prior to or during the import restriction.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988]

Subpart E—International Port Inspection

SOURCE: 48 FR 53564, Nov. 28, 1983, unless otherwise noted.

§ 285.100 Basis and purpose.

At its sixth regular meeting, the International Commission for the Conservation of Atlantic Tunas (Commission) adopted an international port inspection scheme to assist in the enforcement of the Commission's recommendations. The following regulations have been adopted by the United States to implement the port inspection scheme.

§ 285.101 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by a contracting party (the United States and the countries listed in § 285.102(a)) as an authorized inspector for the Commission, who possesses an identification card so stating.

§ 285.102 Vessels subject to inspection.

(a) All United States tuna vessels or vessels carrying tuna and their catch, gear, and records are subject to inspection under this subpart by an authorized officer when landing or transshipping tuna or when making a port call at a port of the following countries, which are defined as the contracting parties. The names of any subsequent additional contracting parties may be added to the list by FEDERAL REGISTER notice. United States tuna vessels or vessels carrying tuna are also subject to the requirements of Subparts A through C as appropriate.

(1) Brazil
(2) Cuba
(3) France
(4) Gabon
(5) Ivory Coast
(6) Portugal
(7) Senegal
(8) South Africa
(9) Spain

(b) All tuna vessels or vessels carrying tuna, and registered by any of the above countries, and their catch, gear and records are subject to inspection under this subpart when landing or transshipping tuna or when making a port call in the United States.

(c) A vessel entering a port of the above countries because of *force majeure* shall be exempt from inspection by an authorized officer.

§ 285.103 Reports.

(a) Inspections must be reported on a standardized Commission form and signed by the authorized officer. The master is entitled to add or have added to the report, any observation which the master thinks suitable. If the master adds information to the report, he also must sign the report. The authorized officer will note in the vessel's log that the inspection has been made. A copy of the report will be given to the vessel master and a copy sent to the authorized officer's national authority.

(b) The master must allow the authorized officer to examine any portion of the catch and gear and provide any relevant documents as the authorized officer deems necessary to verify compliance with these regulations.

[48 FR 53564, Nov. 28, 1983, as amended at 53 FR 24645, June 29, 1988]

SUBCHAPTER I—FISHERY MARKETING COOPERATIVES

PART 290—ISSUANCE OF CEASE AND DESIST ORDERS BY THE GOVERNMENT

Sec.

290.1 Scope of rules.
290.2 Institution of proceeding.
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290.4 Notice of hearing.
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AUTHORITY: Sec. 2, 48 Stat. 1213; 15 U.S.C. 522, 1939 Reorganization Plan No. II, 53 Stat. 1433.

SOURCE: 31 FR 16099, Dec. 15, 1966, unless otherwise noted.

§ 290.1 Scope of rules.

The Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522), the functions under which were transferred to the Secretary of the Interior by 1939 Reorganization Plan No. II, hereinafter in these rules referred to as the Act, in section 2 thereof provides a remedy whereby the associations of producers of aquatic products authorized by section 1 of the Act may be ordered by the Secretary of the Interior to cease and desist from monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof. These rules implement section 2 of the Act by establishing the procedure to be followed by the Secretary of the Interior or his authorized representative, hereinafter referred to in these rules as the Secretary, in the enforcement of the section. For rules governing practice generally before the Department of the Interior see Part 1 of Title 43, *Code of Federal Regulations.*

§ 290.2 Institution of proceeding.

(a) *Application to institute proceeding.* Any person having any information that an association of producers of aquatic products is monopolizing or restraining trade may file with the Secretary an application requesting the institution of such proceeding as is authorized under the Act. The application shall be in writing, signed by or on behalf of the applicant, and shall include a concise statement of the facts constituting the alleged activities and the name and address of the applicant together with the name and address of the association against which the applicant complains.

(b) *Status of the applicant.* The person filing an application as described in paragraph (a) of this section shall have no legal status in the proceeding which may be instituted as a result of the application, except where the applicant may be permitted to intervene therein, in the manner hereinafter provided, or may be called as a witness, and the applicant's identity shall not be divulged except with the applicant's prior consent or upon court order.

(c) *Who may institute.* If, after investigation of the matter complained of in the application described in paragraph (a) of this section, or upon application of another Federal agency, or after investigation made on his own motion, the Secretary has reason to believe that any association organized under the provisions of the Act is engaging in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he will institute a proceeding. Proceedings will be instituted only upon complaint issued by the Secretary.

§ 290.3 Complaint.

(a) *Service.* The complaint shall be served upon the association by being sent by certified mail with return receipt requested to its principal place of business or by being left with a responsible person at the association's principal place of business.

(b) *Contents.* The complaint shall state in concise terms the allegations of fact which constitute a basis for the proceeding and shall require the association to show cause why an order should not be issued requiring it to cease and desist from the activities alleged therein to be in restraint of trade.

§ 290.4 Notice of hearing.

There shall also be served upon the association a notice of hearing, which shall be attached to the complaint or contained therein, and which shall specify a day and place not less than thirty days after service thereof to appear, introduce evidence, and make arguments to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

§ 290.5 Service of documents.

Copies of all pleadings, briefs, memoranda, letters, and other documents filed by or on behalf of any party or which are otherwise submitted to an official conducting any part of the proceeding for consideration in connection therewith, shall be served upon all parties or their representatives in person or by certified mail.

§ 290.6 Hearing official.

The hearing for the purpose of taking evidence and hearing arguments to determine whether an order should be issued requiring the association to cease and desist from monopolization or restraint of trade shall be conducted by a hearing official designated by the Secretary. No person shall be assigned as hearing official who (a) has any pecuniary interest in the matter or business involved in the proceeding, or (b) has participated in the investigation preceding the institution of the proceeding, in the preparation of the complaint, or in the development of the evidence to be introduced in the proceeding.

§ 290.7 Intervention.

Upon written application, interested parties shall be permitted to intervene in the proceedings when the hearing official or the Secretary shall determine that the interests of justice will be served thereby.

§ 290.8 Hearing.

(a) *Departmental counsel.* The case against the association shall be presented by a Departmental counsel appointed for that purpose. The Bureau of Commercial Fisheries shall be responsible for the case against the association and the Bureau shall be considered a party within the purview of these rules.

(b) *Conduct of hearing.* Insofar as feasible, hearings shall be informal. Parties may offer oral and written evidence, subject to the exclusion by the hearing official, in his discretion, of irrelevant, immaterial, repetitious, or hearsay evidence.

(c) *Briefs.* Briefs may be submitted on behalf of interested parties at any time prior to the 30 days after the termination of the hearing.

(d) *Examination of witnesses.* Attention of witnesses shall be invited to 18 U.S.C. 1001. Testimony may be received under oath or affirmation. All witnesses may be examined or cross-examined by the hearing official and by representatives of any party.

(e) *Transcript.* The hearing official shall make provision for a complete transcript of the hearing. A copy of the transcript shall be available to interested parties upon payment of a fee prescribed by the Chief Clerk of the Department of the Interior pursuant to Part 2 of Title 43, Code of Federal Regulations, or pursuant to any applicable Departmental contract covering reporting services.

§ 290.9 Preliminary decision by hearing official.

(a) *Issuance of preliminary decision.* Following the hearing and upon completion of the time allowed for filing briefs, the hearing official shall issue a decision embodying his findings of fact and conclusions of law on all issues as to whether the association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby. The decision of the hearing official shall be made a part of the record and a copy thereof shall be served upon all parties to the proceeding.

(b) *Filing of exceptions.* Within 30 days after service of the decision of the hearing official any party to the proceeding may file with the hearing official exceptions to his decision. This document of exceptions shall set forth separately and specifically each error asserted.

(c) *Transmittal of record.* The hearing official, immediately following the period allowed for the filing of exceptions, shall transmit to the Secretary the entire record of the proceeding. ⊖

§ 290.10 Argument before the Secretary.

(a) *Oral argument.* Unless a party has included in the exceptions a request for oral argument before the Secretary or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, the right to such oral argument shall be deemed to have been waived.

(b) *Briefs.* The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions. If the Secretary determines that additional issues should be argued, the parties or their representatives shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues argued.

§ 290.11 Preparation and issuance of final decision and order.

As soon as practicable after the receipt of the record from the hearing official, or in case further proceedings were had before the Secretary, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record as a whole, including that of any proceedings before him, shall prepare a final decision and an order based upon the decision. If the Secretary has found that the association is engaged in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, the order shall recite the facts found by him and direct such association to cease and desist from monopolization or restraint of trade. The Secretary shall cause this order to be served upon the association. On the request of the association, or if it fails and neglects for 30 days to obey such order, the Secretary shall, in accordance with the Act, file in the district court in the judicial district in which the association has its principal place of business a certified copy of the order and of all the records in the proceeding together with a petition asking that the order be enforced and shall given notice to the Attorney General and to the association of such filing.

SUBCHAPTER J—CONTINENTAL SHELF

PART 296—FISHERMEN'S CONTINGENCY FUND

Sec.
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AUTHORITY: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (Title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

"*Area affected by Outer Continental Shelf activities*" means the area within a 3-mile radius of any casualty site which:

(a) Includes any portion of a leased block, pipeline, easement, right of way or other OCS oil and gas exploration, development, or production activity; or

(b) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

"*Chief, FSD*" means the Chief of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

"*Citizen of the United States*" means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

"*Commercial fisherman*" means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

"*Commercial fishing vessel*" means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

"*Easement*" means a right of use or easement granted under 30 CFR section 250.18.

"*Fish*" means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"*Fishing gear*" means any commercial fishing vessel, and any equipment of such vessel.

"*Fund*" means the Fishermen's Contingency Fund established by Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

"*Holder*" means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

"*Lease*" means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

"*Negligence or fault*" includes, but is not limited to, failure to:

(a) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(b) Avoid obstructions recorded on nautical charts or in the Notice to

Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(c) Abide by established rules of the road;

(d) Use proper care; or

(e) Use due care and diligence to mitigate the damage or loss.

"*Outer Continental Shelf*" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

"*Person*" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"*Resulting Economic Loss*" means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

"*Right-of-way*" means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0-5.

"*Secretary*" means the Secretary of Commerce or his designee.

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of $5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Effective date.* These regulations will apply to claims filed on or after June 30, 1982, and to those claims refiled under paragraph (d) of this section.

(d) *Refiled claims.* Any claim filed before June 30, 1982, will be subject to these regulations if:

(1) No final decision had been made on the claim by June 30, 1982; and

(2) The claimant has notified the Secretary in writing by August 11, 1982, of his intent to refile the claim.

(e) *Exceptions.* Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation*—(1) *General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to one of the following NMFS Offices:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, MA 01930, (617) 281-3224

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, FL 33702, (813) 893-3272

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, (213) 548-2478

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Bin C15700, Seattle, WA 98115, (206) 527-6127

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, (907) 586-7224

Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue N.W., Washington, DC 20235, (202) 673-5424.

(3) *Written confirmation of oral fifteen-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each fifteen-day report that is made by telephone, radiotelephone, or other oral

communication. Address the written confirmation to:

Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW. Washington, DC 20235.

(4) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file and when and where to file claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, D.C. 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units hauled on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

(Approved by the Office of Management and Budget under control number 0648-0082)

[47 FR 49600, Nov. 1, 1982, as amended at 48 FR 57302, Dec. 29, 1983; 50 FR 13796, Apr. 8, 1985; 53 FR 24645, June 29, 1988]

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim, the Interior Department will immediately:

(1) Convert the casualty coordinates into latitude and longitude, plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities; (2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years' imprisonment, or both.

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FDS, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, FSD, shall immediately disburse the claim awarded if the claimant:

(1) States in writing that he will not request review of the initial determination; and

(2) Signs an agreement to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) If the claimant does not submit the statement and agreement specified above, the Chief, FSD, will not disburse the award until 30 days after issuance of the initial determination.

§ 296.14 Subrogation.

(a) Upon payment of a claim, the Chief, FSD, Will obtain a subrogation agreement signed by the claimant which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.

CHAPTER III—INTERNATIONAL REGULATORY AGENCIES (FISHING AND WHALING)

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SUBCHAPTER A—INTERNATIONAL PACIFIC HALIBUT COMMISSION

PART 301—PACIFIC HALIBUT FISHERIES

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APPENDIX TO PART 301

AUTHORITY: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

SOURCE: 53 FR 10537, Apr. 1, 1988, unless otherwise noted.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part,

Automated hook stripper (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks;

Charter vessel means a vessel used for hire in sport fishing for halibut, not including a vessel without a hired operator;

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered;

Commission means the International Pacific Halibut Commission;

Fishery officer means any state, federal, or provincial officer authorized to enforce this part, including, but not limited to the National Marine Fisheries Service (NMFS), Canadian Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the United States Coast Guard (USCG);

Fishing means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

Fishing period limit means the maximum amount of halibut that may be caught and landed by a vessel during one fishing period;

Land with respect to halibut means to bring to shore and to offload;

License means a halibut fishing license issued by the Commission pursuant to §§ 301.12 and 301.20 of this part;

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel;

Person includes an individual, corporation, firm, or association;

Regulatory area means an area referred to in § 301.5 of this part;

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached;

Sport fishing means all fishing other than commercial fishing;

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are magnetic and all positions are determined by the most recent charts issued by the United States National Ocean

Service or the Canadian Hydrographic Service.

§ 301.3 In-season actions.

(a) The Pacific halibut fishery will be managed so as not to exceed the catch limits established preseason for each regulatory area.

(b) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(1) Will not result in exceeding catch limits;

(2) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and,

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(c) In-season actions may include, but are not limited to, establishment or modification of the following:

(1) Fishing periods;

(2) Fishing period limits (trip limits);

(3) Recreational bag limits;

(4) Closed areas;

(5) Size limits; or,

(6) Gear restrictions.

(d) In-season changes will be effective at the time and date specified by the Commission.

(e) The Commission will announce in-season actions under this section by providing notice to major halibut processors, Federal, State, United States treaty tribal, and Provincial fishery officials, and the media.

§ 301.4 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.5 to 301.18 of this part apply to commercial fishing for halibut.

(c) Section 301.19 applies to fishing for halibut by United States treaty Indian tribes in the State of Washington.

(d) Section 301.20 of this part applies to sport fishing for halibut.

(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.5 Regulatory areas.

The following areas shall be regulatory areas (refer to figure in Appendix following § 301.21 of this part) for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts of the States of California, Oregon, and Washington.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11′57″ N., longitude 136°38′18″ W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41′15″ N., longitude 155°35′00″ W.) to Cape Ikolik (latitude 57°17′17″ N., longitude 154°47′18″ W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44′50″ N., longitude 154°08′44″ W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29′00″ N., longitude 164°20′00″ W.) and south of latitude 54°49′00″ N. in Isanotski Pass.

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.8 of this part that are east of longitude 172°00′00″ W. and south of latitude 56°20′00″ N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20′00″ N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.8 of this part which are east of longitude 171°00′00″ W., south of latitude 58°00′00″ N., and west of longitude 168°00′00″ W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00′00″ W.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.8 of this part, east of longitude 168°00′00″ W., and south of latitude 65°34′00″ N.

§ 301.6 Fishing periods.

(a) The fishing periods for each regulatory area are set out in Table 1 and apply where the catch limits specified in § 301.9 of this part have not been taken.

TABLE 1—Regulatory Area Fishing Periods

2A	2B	2C-3A-3B
6/26-7/01	5/06-5/14	5/23-5/24
7/25-7/30	[1] -6/12	6/20-6/21
8/31- [1]	[1] -8/25	9/07-9/08
		10/03-10/04
		10/17- [1]

4A	4B
5/23-5/24	5/23-5/24
6/20-6/21	6/20-6/21
8/05-8/06	8/04-8/07
9/07-9/08	9/07-9/08
9/16- [1]	9/16- [1]

4C	4D	4E
6/20-6/21	8/02-8/09	6/01-6/03
6/22-6/23	9/16- [1]	6/04-6/06
6/24-6/25		6/07-6/09
6/26-6/27		6/10-6/12
6/28-6/29		6/13-6/15
6/30-7/01		6/16-6/18
7/02-7/03		6/19-6/21
7/04-7/05		6/22-6/24
7/06-7/07		6/25-6/27
7/08-7/09		6/28-6/30
7/10-7/11		7/01-7/03
7/12-7/13		7/04-7/06
7/14-7/15		7/07-7/09
7/16-7/17		7/10-7/12
7/18-7/19		7/13-7/15
7/20-7/21		7/16-7/18
7/22-7/23		7/19-7/21
7/24-7/25		7/22-7/24
7/26-7/27		7/25-7/27
7/28-7/29		7/28-7/30
7/30-7/31		7/31-8/02
8/01-8/02		8/03-8/05
8/03-8/04		8/06-8/08
8/05-8/06		8/09-8/11
8/07-8/08		8/12-8/14
8/09-8/10		8/15-8/17
8/11-8/12		8/18-8/20
8/13-8/14		8/21-8/23
8/15-8/16		8/24-8/26
8/17-8/18		8/27-8/29
8/19-8/20		8/30-9/01
8/21-8/22		9/02-9/04
8/23-8/24		9/05-9/07
8/25-8/26		9/08-9/10
8/27-8/28		9/11-9/13
8/29-8/30		9/14-9/16
8/31-9/01		9/17-9/19
9/02-9/03		9/20-9/22
9/04-9/05		9/23-9/25
9/06-9/07		9/26-9/28
9/08-9/09		9/29-10/01
9/10-9/11		10/02-10/04
9/12-9/13		10/05-10/07
9/14-9/15		10/08-10/10
9/16-9/17		10/11-10/13
9/18-9/19		10/14-10/16
9/20-9/21		10/17-10/19
9/22-9/23		10/20-10/22
9/24-9/25		10/23-10/25
9/26-9/27		10/26-10/28
9/28-9/29		10/29-10/31
9/30-10/01		
10/02-10/03		
10/04-10/05		
10/06-10/07		
10/08-10/09		
10/10-10/11		
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10/16-10/17		
10/18-10/19		
10/20-10/21		
10/22-10/23		
10/24-10/25		
10/26-10/27		
10/28-10/29		
10/30-10/31		

[1] Date to be announced by the Commission.

(b) [Reserved]

(c) Each fishing period in Areas 2A and 2B shall begin and terminate at 1200 hours Pacific Daylight Time on the date set out in the table to this section, unless the Commission specifies otherwise.

(d) Each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin and terminate at 1200 hours Alaska Standard or Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(e) All commercial fishing for halibut in Areas 2A and 2B shall cease at 1200 hours Pacific Standard Time on October 31.

(f) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

[53 FR 10538, Apr. 1, 1988; 53 FR 16838, May 11, 1988]

§ 301.7 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.6 of this part in respect to that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.16(f) and (g) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.8 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36′00″ N., longitude 164°55′42″ W.) to a point at latitude 56°20′00″ N., longitude 168°30′00″ W., south of a line from the latter point to Cape Newenham (latitude 58°39′00″ N., longitude 162°10′25″ W.), and north of latitude 54°49′00″ N. in Isanotski Pass are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.9 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.6 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	330,000	150
2B	12,500,000	5,670
2C	11,500,000	5,216
3A	36,000,000	16,329
3B	8,000,000	3,629
4A	1,900,000	862
4B	2,000,000	907
4C	700,000	318
4D	700,000	318
4E	100,000	45

(b) The weights in each catch limit shall be computed on the basis that the heads of the fish are off and their entrails removed.

(c) Notwithstanding paragraph (a), the total allowable catch in Area 2A will be limited to 750,000 pounds (340 metric tons) for the treaty Indian, non-Indian commercial, and sport fisheries combined.

(d) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(e) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(f) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 44,000,000 pounds (19,958 metric tons) for the combined areas is taken.

(g) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,900,000 pounds (1,769 metric tons) for the combined areas is taken.

(h) When under paragraphs (d), (e), (f) or (g) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.10 Fishing period limits.

(a) It shall be unlawful for any licensed vessel to catch or land more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) Vessels fishing in Area 4C will be limited to a maximum catch of 10,000 pounds of halibut per fishing period until 50 percent of the catch limit for Area 4C specified in § 301.8 (a) of this part has been taken, and thereafter will be limited to a maximum catch of 20,000 pounds of halibut per fishing period.

(c) Vessels fishing in Area 4E will be limited to a maximum catch of 6,000 pounds of halibut per fishing period.

(d) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.

(e) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.

[53 FR 10538, Apr. 1, 1988, as amended at 53 FR 20330, June 3, 1988]

§ 301.11 Size limits.

(a) No person shall take or possess any halibut that,

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

§ 301.12 Licensing of vessels.

(a) No person shall fish for halibut from a vessel, nor possess halibut aboard a vessel used to fish for halibut, unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(b) A license issued in respect of a vessel referred to in paragraph (a) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(c) The Commission shall issue a license without fee from its office in Seattle, Washington, upon receipt of a completed written and signed "Application for Vessel License for the Halibut Fishery" form.

(d) Application forms may be obtained from customs or fishery officers of either Contracting Party, or from the Commission.

(e) Licenses issued under this section shall be valid only during the year in which they are issued.

(f) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(g) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(h) The United States may suspend, revoke, or modify any permit issued under this section under policies and procedures in 15 CFR Part 904.

§ 301.13 Vessel clearance and hold inspection.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.8 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut within Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.8 of this part may fish for halibut within Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspections required under paragraphs (a), (b), and (c) of this section are mutually exclusive.

(e) The vessel clearance and hold inspections required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(f) The vessel operator shall specify the specific fishing period and regulatory area(s) in which fishing will take place.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) No halibut may be on board at the time of inspection required by paragraph (g) of this section.

(i) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 may be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(j) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

[53 FR 10538, Apr. 1, 1988; 53 FR 20330, June 3, 1988]

§ 301.14 Logs.

(a) The operator of any vessel five (5) net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for five (5) days following offloading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.15 Receipt and possession of halibut.

(a) No person shall receive halibut from a vessel that does not have the license required by § 301.12 on board the vessel.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State or Provincial fish tickets, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) No person shall make a false entry on a State or Provincial fish ticket referred to in paragraph (b) of this section.

(d) A copy of the fish tickets referred to in paragraph (b) of this section shall be

(1) Retained by the person making them for a period of two years from the date the fish tickets are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(e) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(f) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (b) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (d) of this section.

(g) It shall be illegal to enter a Halibut Commission license number on a State or Provincial fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.16 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number,

which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(e) All setline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing shall be

(1) Floating and visible on the surface of the water; and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(f) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.4(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(g) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.4(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period will not apply to persons and vessels fishing for halibut during the fishing periods in Areas 4C and 4E as described in § 301.5 (h) and (j) of this part.

(i) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(j) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

[53 FR 10538, Apr. 1, 1988; 53 FR 20330, June 3, 1988]

§ 301.17 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.18 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

§ 301.19 Fishing by United States treaty Indian tribes.

(a) *Relation to other laws.* Except as provided in this section, all regulations of the Commission in this part apply to halibut fishing by members of United States treaty Indian tribes from the State of Washington.

(b) For purposes of this part, United States treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Squamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A-1 includes all waters off the coast of Washington that are north of latitude 46°53′18″ N. and east of longitude 125°44′00″ W.

(d) Commercial fishing for halibut in subarea 2A-1 is permitted with hook and line gear from March 1 through October 31.

(e) Subsistence and ceremonial fishing for halibut in subarea 2A-1 is permitted with hook and line gear from February 1 through December 31, except that from February 1 through February 29 and November 1 through December 31, treaty Indians may take and retain, but not sell, not more than two halibut per day.

(f) Notwithstanding paragraphs (d) and (e) of this section, the use of setlines is prohibited from March 1 through March 31 in the Strait of Juan de Fuca and Puget Sound east of a line from Bonilla Point (latitude 48°55′44″ N., longtitude 124°43′00″ W.) to Tatoosh Island (latitude 48°23′30″ N., longitude 124°44′00″ W.) to Cape Flattery (latitude 48°22′55″ N., longitude 124°43′42″ W.).

(g) *Size limit.* All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the size limits specified in § 301.11.

(h) Any member of a United States treaty Indian tribe as defined in paragraph (b) of this section who is engaged in commercial, subsistence or ceremonial fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A, and must fish from a vessel properly identified and marked with the treaty Indian vessel identification as required by 25 CFR Part 249, Subpart A.

(i) The following table (Table 2) sets forth the fishing areas of each of the twelve United States treaty Indian tribes fishing pursuant to this § 301.19. Within Subarea 2A-1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TABLE 2—FISHING AREAS FOR U.S. TREATY INDIAN TRIBES

Tribe	Boundaries
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Swinomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1351-1352, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

TABLE 2—FISHING AREAS FOR U.S. TREATY INDIAN TRIBES—Continued

Tribe	Boundaries
Squamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Squamish Tribe may fish under rights secured by treaties with the United States.
Skokomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
Makah	North of 48°02′15″ N. latitude (Norwegian Memorial), west of 123°42′30″ W. longitude, and east of 125°44′00″ W. longitude.
Quileute	Between 48°07′36″ N. latitude (Sand Point) and 47°31′42″ N. latitude (Queets River), and east of 125°44′00″ W. longitude.
Hoh	Between 47°54′18″ N. latitude (Quillayute River) and 47°21′00″ N. latitude (Quinault River), and east of 125°44′00″ W. longitude.
Quinault	Between 47°40′06″ N. latitude (Destruction Island) and 46°53′18″ N. latitude (Point Chehalis), and east of 125°44′00″ W. longitude.
L. Elwha	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Tribe may fish under rights secured by treaties with the United States.
Jamestown	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Tribe may fish under rights secured by treaties with the United States.
Port Gamble	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Tribe may fish under rights secured by treaties with the United States.

§ 301.20 Sport fishing for halibut in all waters.

(a) Sport fishing for halibut in all waters

(1) Off the coasts of Alaska and British Columbia is only permitted from February 1 to December 31;

(2) In Puget Sound and United States waters in the Strait of Juan de Fuca, east of a line from Bonilla Point (latitude 48°55′44″ N., longitude 124°43′00″ W.) to Tatoosh Island (latitude 48°23′30″ N., longitude 124°44′00″ W.) to Cape Flattery (latitude 48°22′55″ N., longitude 124°43′42″ W.) is only permitted from March 1 to June 15;

(3) Off the North Washington Coast west of the line described in paragraph (a)(2) of this section and north of the Queets River (latitude 47°32′00″ N., longitude 124°21′15″ W.) is only permitted from May 1 to June 30;

(4) South of the Queets River, including the South Washington Coast, Oregon, and California is only permitted from April 1 to September 30.

(b) Notwithstanding paragraph (a) of this section the catch limit for halibut.

(1) For Washington waters north of the Queets River, including the Strait of Juan de Fuca and Puget Sound, is 207,000 pounds (93.9 metric tons);

(2) For waters between the Queets River and the Oregon/Washington border is 3,000 pounds (1.4 metric tons);

(3) For waters south of the Oregon/Washington border is 60,000 pounds (27.2 metric tons).

(c) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(d) The daily bag limit in waters described in paragraphs (a)(1), (a)(3), and (a)(4) of this section is two halibut of any size per day per person.

(e) The daily bag limit in waters described in paragraph (a)(2) of this section is one halibut of any size per day per person.

(f) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(g) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(h) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

(i) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(j) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(k) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(l) A license issued in respect of a vessel referred to in paragraph (k) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

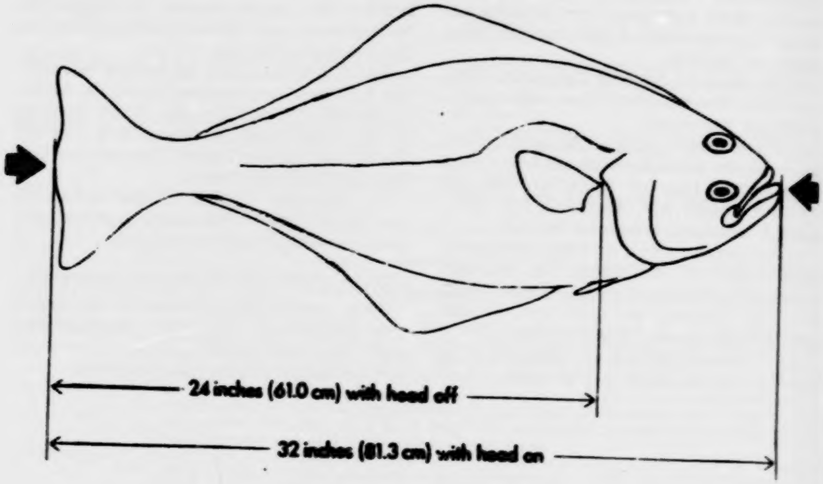
(m) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed written and signed "Application for Vessel License for the Halibut Fishery" form.

(n) Licenses issued under this section shall be valid only during the year in which they are issued.

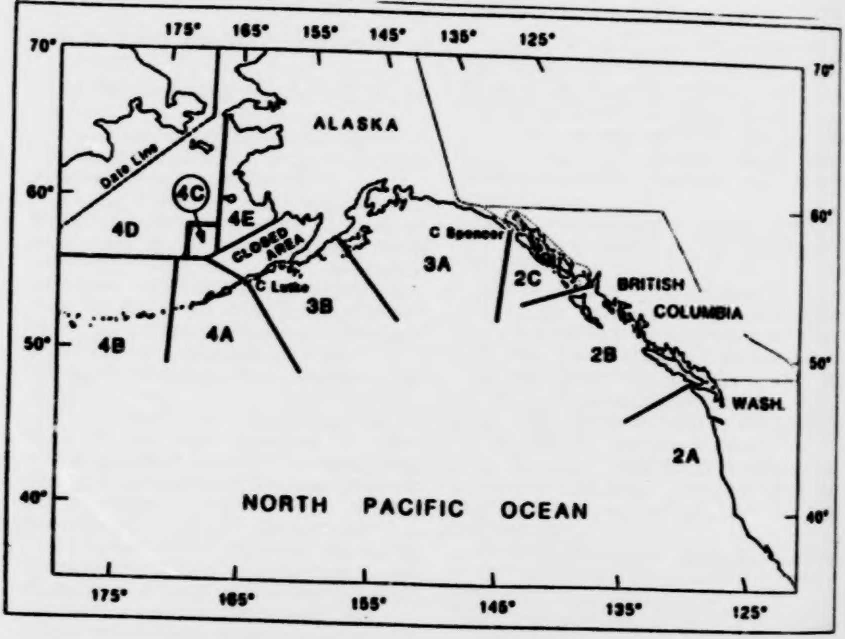
§ 301.21 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

APPENDIX TO PART 301


24 inches (61.0 cm) with head off
32 inches (81.3 cm) with head on

Minimum commercial size.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2C
BRITISH COLUMBIA
2B
WASH.
2A
NORTH PACIFIC OCEAN

Regulatory areas for the Pacific halibut fishery.

SUBCHAPTER B—INTERNATIONAL WHALING COMMISSION

PART 351—WHALING

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351.73 Submission of statistical data.
351.74 Collection of specimens.
351.75 Review of scientific permits.
351.76 Submission of laws and regulations.
APPENDIX A

AUTHORITY: Article 5, 62 Stat. 1718, sec. 2-14, 64 Stat. 421-425; 16 U.S.C. 916 et seq.

SOURCE: 45 FR 85031, Dec. 24, 1980, unless otherwise noted.

Subpart A—Interpretation

§ 351.1 Definitions.

The following expressions have the meanings respectively assigned to them, that is to say:

Baleen whales

(a) "Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale.

(b) "Blue whale" (*Balaenoptera musculus*) means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

(c) "Bowhead whale" (*Balaena mysticetus*) means any whale known as bowhead, Arctic right whale, great polar whale, Greenland right whale, Greenland whale.

(d) "Bryde's whale" (*Balaenoptera edeni, B. brydei*) means any whale known as Bryde's whale.

(e) "Fin whale" (*Balaenoptera physalus*) means any whale known as common finback, common rorqual, fin whale, herring whale, or true fin whale.

(f) "Gray whale" (*Eschrichtius robustus*) means any whale known as gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(g) "Humpback whale" (*Megaptera novaeangliae*) means any whale known as bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchback whale.

(h) "Minke whale" (*Balaenoptera acutorostrata, B. bonaerensis*) means any whale known as lesser rorqual, little piked whale, minke whale, pikeheaded whale or sharp headed finner.

(i) "Pygmy right whale" (*Caperea marginata*) means any whale known as southern pygmy right whale, pygmy right whale.

(j) "Right whale" (*Eubalaena glacialis, E. australis*) means any whale known as Atlantic right whale, Arctic right whale, Biscayan right whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, or southern right whale.

(k) "Sei whale" (*Balaenoptera borealis*) means any whale known as sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale.

Toothed whales

(a) "Toothed whale" means any whale which has teeth in the jaws.

(b) "Beaked whale" means any whale belonging to the genus *Mesoplodon*, or any whale known as Cuvier's beaked whale (*Ziphius cavirostris*), or Shepherd's beaked whale (*Tasmacetus shepherdi*).

(c) "Bottlenose whale" means any whale known as Baird's beaked whale (*Berardius bairdii*), Arnoux's whale (*Berardius arnuxii*), southern bottlenose whale (*Hyperoodon planifrons*), or northern bottlenose whale (*Hyperoodon ampullatus*).

(d) "Killer whale" (*Orcinus orca*) means any whale known as killer whale or orca.

(e) "Pilot whale" means any whale known as long-finned pilot whale (*Globicephala melaena*) or short-finned pilot whale. (*G. macrorhynchus.*)

(f) "Sperm whale" (*Physeter macrocephalus*) means any whale known as sperm whale, spermacet whale, cachalot or pot whale.

General

(a) "Strike" means to penetrate with a weapon used for whaling.

(b) "Take" means to flag, buoy or make fast to a whale catcher.

(c) "Land" means to retrieve to a factory ship, land station, or other place where a whale can be treated.

(d) "Lose" means to either strike or take but not land.

(e) "Dauhval" means any unclaimed dead whale found floating.

(f) "Lactating whale" means (1) with respect to baleen whales—a female which has any milk present in a mammary gland, (2) with respect to sperm whales—a female which has milk present in a mammary gland the maximum thickness (depth) of which is 10 cm or more. This measurement shall be at the mid ventral point of the mammary gland perpendicular to the body axis, and shall be logged to the nearest centimetre; that is to say, any gland between 9.5 cm and 10.5 cm shall be logged as 10 cm. The measurement of any gland which falls on an exact 0.5 centimetre shall be logged at the next 0.5 centimetre, eg 10.5 cm shall be logged as 11.0 cm.

However, notwithstanding these criteria, a whale shall not be considered a lactating whale if scientific (histological or other biological) evidence is presented to the appropriate national authority establishing that the whale could not at that point in its physical cycle have had a calf dependent on it for milk.

(g) "Small-type whaling" means catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.

Subpart B—Seasons

§ 351.21 Use of factory ships and whale catchers.

(a) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales except minke whales, in any waters south of 40° South Latitude, except during the period from 12th December to 7th April following, both days inclusive.

(b) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating sperm or minke whales, except as permitted by the Contracting Governments in accordance with paragraphs (c) and (d) of this section, and § 351.23.

(c) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction, an open season or seasons not to exceed eight months out of any period of twelve months during which the taking or killing of sperm whales by whale catchers may be permitted; provided that a separate open season may be declared for each factory ship and the whale catchers attached thereto.

(d) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by the whale catchers may be permitted provided that:

(1) A separate open season may be declared for each factory ship and the whale catchers attached thereto;

(2) The open season need not necessarily include the whole or any part of the period declared for other baleen whales pursuant to paragraph (a) of this section.

(e) It is forbidden to use a factory ship which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, except minke whales, in any other area except the North Pacific Ocean and its dependent waters north of the Equator for the same purpose within a period of one year from the termination of that season; provided that catch limits in the North Pacific Ocean and dependent waters are established as provided in § 351.35(b) and § 351.39(b) of this part and provided that this section shall not apply to a ship which has been used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

§ 351.22 Use of land stations and whale catchers.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of killing or attempting to kill baleen and sperm whales except as permitted by the Contracting Government in accordance with paragraphs (b), (c) and (d) of this section.

(b) Each Contracting Government shall declare for all land stations under its jurisdiction, and whale catchers attached to such land stations, one open season during which the taking or killing of baleen whales, except minke whales, by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of the Contracting Government provided that a separate open season may be declared for any land station used for the taking or treating of baleen whales, except minke whales, which is more than 1,000 miles from the nearest land station used for the taking or treating of baleen whales, except minke whales, under the jurisdiction of the same Contracting Government.

(c) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations, one open season not to exceed eight continuous months in any one period of twelve months, during which the taking or killing of sperm whales by the whale catchers shall be permitted, provided that a separate open season may be declared for any land station used for the taking or treating of sperm whales which is more than 1,000 miles from the nearest land station used for the taking or treating of sperm whales under the jurisdiction of the same Contracting Government.

(d) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations one open season not to exceed six continuous months in any period of twelve months during which the taking or killing of minke whales by the whale catchers shall be permitted (such period not being necessarily concurrent with the period declared for other baleen whales, as provided for in paragraph (b) of this section); provided that a separate open season may be declared for any land station used for the taking or treating of minke whales which is more than 1,000 miles from the nearest land station used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government. Except that a separate open season may be declared for any land station used for the taking or treating of minke whales which is located in an area having oceanographic conditions clearly distinguishable from those of the area in which are located the other land stations used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government; but the declaration of a separate open season by virtue of the provisions of this paragraph shall not cause thereby the period of time covering the open seasons declared by the same Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this section shall apply to all land stations as defined in Article II of the Whaling Convention of 1946.

§ 351.23 Other operations.

Each Contracting Government shall declare for all whale catchers under its jurisdiction not operating in conjunction with a factory ship or land station one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by such whale catchers may be permitted. Notwithstanding this section one continuous open season not to exceed nine months may be implemented so far as Greenland is concerned.

Subpart C—Capture

§ 351.30 Humane killing.

The killing for commercial purposes of whales, except minke whales, using the cold grenade harpoon shall be forbidden from the beginning of the 1980/81 pelagic and 1981 coastal seasons. The killing for commercial purposes of minke whales using the cold grenade harpoon shall be forbidden from the beginning of the 1982/83 pelagic and the 1983 coastal seasons.

[48 FR 15130, Apr. 7, 1983]

§ 351.31 Indian Ocean sanctuary.

In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the Indian Ocean Sanctuary. This comprises the waters of the Northern Hemisphere from the coast of Africa to 100 degrees East, including the Red and Arabian Seas and the Gulf of Oman; and the waters of the Southern Hemisphere in the sector from 20 degrees East to 130 degrees East, with the Southern boundary set at 55 degrees South. This prohibition applies irrespective of the classifications of baleen or toothed whale stocks in the Sanctuary, as may from time to time be determined by the Commission. This prohibition will apply for ten years from 24 October 1979 with the provision for a general review after five years, unless the Commission decides otherwise.

§ 351.32 Area limits for factory ships.

It is forbidden to use a factory ship or whale catcher attached thereto, for the purpose of taking or treating baleen whales, except minke whales, in any of the following areas:

(a) In the waters north of 66° North Latitude, except that from 150° East Longitude eastwards as far as 140° West Longitude, the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) In the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) In the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) In the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) In the Indian Ocean and its dependent waters north of 40° South Latitude.

§ 351.33 Classification of areas and divisions.

(a) *Classification of areas.* Areas relating to Southern Hemisphere baleen whales except Bryde's whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 1.

(b) *Classification of divisions.* Divisions relating to Southern Hemisphere sperm whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 3.

(c) *Geographical boundaries in the North Atlantic.* The geographical boundaries for the fin, minke and sei whale stocks in the North Atlantic are:

Fin whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Newfoundland—Labrador, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 46° N 42° W and

North of a line through: 46° N 42° W, 46° N 54°30' w, 47° N 54° W.

West Greenland, East of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, and West of a line through: 52°20' N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

East Greenland—Iceland, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

North Norway, North and East of a line through: 74° N 22° W, 74° N 3° E, 68° N 3° E, 67° N 0°, 67° N 14° E.

West Norway and Faroe Islands, South of a line through: 67° N 14° E, 67° N 0°, 60° N 18° W, and North of a line through: 61° N 16° W, 61° N 0°, Thyboron (western entrance to Limfjorden, Denmark).

British Isles—Spain and Portugal, South of a line through: Thyboron (Denmark), 61° N 0°, 61° N 16° W, and East of a line through: 63° N 11° W, 60° N 18° W, 22° N 18° W.

Minke whale stocks

Canadian East Coast, West of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, 20° N 42° W.

West Greenland, East of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, and West of a line through: 52°20' N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

Central, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Northeastern, East of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and North of a line through: 74° N 3° E, 74° N 22° W.

Sei whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30' W, 46° N 42° W, 20° N 42° W.

Iceland—Denmark Strait, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Eastern, East of a line through: 20°N 18°W, 60°N 18°W, 68°N 3°,E 74°N 30°E and North of a line through: 74°N 3°E, 74°N 22°W.

(d) *Geographical boundaries in the North Pacific.* The geographical, boundaries for sperm, Bryde's and minke whale stocks in the North Pacific are:

Sperm Whale Stocks

Western Division

West of a line from the ice-edge south along the 180° meridian of longitude to 180°, 50° N., then east along the 50° N. parallel of latitude to 160° W., 50° N., then south along the 160° W. meridian of longitude to 160° W., 40° N., then east along the 40° N. parallel of latitude to 150° W., 40° N., then south along the 150° W. meridian of longitude to the equator.

Eastern Division

East of the line described above.

Bryde's Whale Stocks

East China Sea, West of the Ryuku Island chain.

Western, West of 160° W., excluding the East China Sea stock area.

Eastern, East of 160° W., excluding the Peruvian stock area.

Minke Whale Stocks

Sea of Japan—Yellow Sea—East China Sea

West of a line through the Philippine Islands, Taiwan, Ryuku Islands, Kyushu, Honshu, Hokkaido, and Sakhalin Island, north of the equator.

Okhotsk Sea—West Pacific

East of the Sea of Japan—Yellow Sea—East China Sea stock area and west of 180°, north of the equator.

Remainder

East of the Okhotsk Sea—West Pacific stock area, north of the equator.

(e) Geographical boundaries for Bryde's whale stocks in the Southern Hemisphere.

Southern Indian Ocean, 20°E to 130°E, south of the Equator.

Solomon Islands, 150°E to 170°E, 20°S to the Equator.

Western South Pacific, 130°E to 150°W, south of the Equator (excluding the Solomon Islands stock area).

Peruvian, 100°W to the South American coast, 10°S to 10°N.

Eastern South Pacific, 150°W to 70°W, south of the Equator (excluding the Peruvian stock area).

South Atlantic, 70°W to 20°E, south of the Equator (excluding the South African Inshore stock area).

South African Inshore, 30nm seawards off the southwest coast of South Africa from 25°S latitude down and around the coast to 25°E longitude.

[45 FR 85031, Dec. 24, 1980, as amended at 47 FR 3793, Jan. 27, 1982; 48 FR 15130, Apr. 7, 1983]

§ 351.34 Classification of stocks.

All stocks of whales shall be classified in one of three categories according to the advice of the Scientific Committee as follows:

(a) A Sustained Management Stock (SMS) is a stock which is not more than 10 per cent of Maximum Sustainable Yield (hereinafter referred to as MSY) stock level below MSY stock level, and not more than 20 per cent above that level; MSY being determined on the basis of the number of whales.

(1) When a stock has remained at a stable level for a considerable period under a regime of approximately constant catches, it shall be classified as a Sustained Management Stock in the absence of any positive evidence that it should be otherwise classified.

(2) Commercial whaling shall be permitted on Sustained Management Stocks according to the advice of the Scientific Committee. These stocks are listed in Tables 1, 2, and 3 of this part.

(3) For stocks at or above the MSY stock level, the permitted catch shall not exceed 90 per cent of the MSY. For stocks between the MSY stock level and 10 per cent below that level, the permitted catch shall not exceed the number of whales obtained by taking 90 per cent of the MSY and reducing that number by 10 per cent for every 1 per cent by which the stock falls short of the MSY stock level.

(b) An Initial Management Stock (IMS) is a stock more than 20 per cent of MSY stock level above MSY stock level. Commercial whaling shall be permitted on Initial Management Stocks according to the advice of the Scientific Committee as to measures necessary to bring the stocks to the MSY stock level and then optimum level in an efficient manner and without risk of reducing them below this level. The permitted catch for such stocks will not be more than 90 per cent of MSY as far as this is known, or, where it will be more appropriate, catching effort shall be limited to that which will take 90 per cent of MSY in a stock at MSY stock level.

(1) In the absence of any positive evidence that a continuing higher percentage will not reduce the stock below the MSY stock level no more than 5 per cent of the estimated initial exploitable stock shall be taken in any one year. Exploitation should not commence until an estimate of stock size has been obtained which is satisfactory in the view of the Scientific Committee. Stocks classified as Initial Management Stock are listed in Tables 1, 2, and 3 of this part.

(c) A Protection Stock (PS) is a stock which is below 10 per cent of MSY stock level below MSY stock level.

(1) There shall be no commercial whaling on Protection Stocks. Stocks so classified are listed in Tables 1, 2, and 3 of this part.

(d) Notwithstanding the other provisions of § 351.34, there shall be a moratorium on the taking, killing, or treating of whales, excluding minke whales, by factory ships or whale catchers attached to factory ships. This moratorium applies to sperm whales, killer whales and baleen whales, excluding minke whales.

(e) Notwithstanding the other provisions of § 351.34, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whole stocks and consider modification of this provision and the establishment of other catch limits.

[45 FR 85031, Dec. 24, 1980, as amended at 48 FR 15130, Apr. 7, 1983]

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1983/84 pelagic season and the 1984 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the sum of the area catches exceed the total catch limit for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1984 and in the

North Atlantic Ocean in 1984 shall not exceed the limits shown in Tables 1 and 2.

[49 FR 1522, Jan. 12, 1984]

§ 351.36 Aboriginal substance whaling.

(a) Notwithstanding the provisions of § 351.34, catch limits for aboriginal subsistence whaling to satisfy aboriginal subsistence need for the 1984 whaling season and each whaling season thereafter shall be established in accordance with the following principles:

(1) For stocks at or above the MSY level, aboriginal subsistence catches shall be permitted so long as total removals do not exceed 90 percent of MSY.

(2) For stocks below the MSY level, but above a certain minimum level, aboriginal subsistence catches shall be permitted so long as they are set at levels which will allow whale stocks to move to the MSY level.[1]

(3) The above provisions will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of these provisions on whale stocks and consider modification.

(b) Catch limits for aboriginal subsistence whaling are as follows:

(1) The taking of 9 humpback whales not below 35 feet (10.7 metres) in length per year is permitted in Greenland waters provided that whale catchers of less than 50 gross register tonnage are used for this purpose.

(2) The taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that:

(i) For the years 1984 and 1985 the total number of whales struck shall not exceed 43,[2] provided that in either year the number of whales struck shall not exceed 27.

(ii) It is forbidden to strike, take, or kill calves or any bowhead whale accompanied by a calf.

(3) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. The number of gray whales taken in accordance with this subparagraph in 1984 shall not exceed the limit shown in Table 1.

[48 FR 15130, Apr. 7, 1983, as amended at 49 FR 1523, Jan. 12, 1984]

§ 351.37 Taking of calves or suckling whales prohibited.

It is forbidden to take or kill suckling calves or female whales accompanied by calves.

§ 351.38 Size limits for sei, Bryde's and fin whales.

(a) It is forbidden to take or kill any sei or Bryde's whales below 40 feet (12.2 metres) in length except that sei and Bryde's whales of not less than 35 feet (10.7 metres) may be taken for delivery to land stations, provided that, the meat of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) in the Northern Hemisphere; except that fin whales of not less than 55 feet (16.8 metres) may be taken in the Southern Hemisphere for delivery to land stations and fin whales of not less than 50 feet (15.2 metres) may be taken in the Northern Hemisphere for delivery to land stations, provided that, in each case the meat of such whales is to be used for local consumption as human or animal food.

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[1] The Commission, on the advice of the Scientific Committee, shall establish as far as possible (i) a minimum stock level for each stock below which whales shall not be taken, and (ii) a rate of increase towards the MSY level for each stock. The Scientific Committee shall advise on a minimum stock level and on a range of rates of increase towards the MSY level under different catch regimes.

[2] At the end of the first year this figure will be reviewed and if necessary amended on the basis of the advice of the Scientific Committee.

§ 351.39 Catch limits for sperm whales.

Catch limits for sperm whales of both sexes shall be set at zero in the Southern Hemisphere for the 1981/82 pelagic season and 1982 coastal seasons and following seasons, and at zero in the Northern Hemisphere for the 1982 and following coastal seasons: except that the catch limits for the 1982 coastal season and following seasons in the Western Division of the North Pacific shall remain undetermined and subject to decision by the Commission following special or annual meetings of the Scientific Committee. These limits shall remain in force until such time as the Commission, on the basis of the scientific information which will be reviewed annually, decides otherwise in accordance with the procedures followed at that time by the Commission.

[48 FR 15130, Apr. 7, 1983]

§ 351.40 Size limits for sperm whales.

(a) It is forbidden to take or kill any sperm whales below 30 feet (9.2 metres) in length except in the North Atlantic Ocean where it is forbidden to take or kill any sperm whales below 35 feet (10.7 metres).

(b) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the Southern Hemisphere north of 40° South Latitude during the months of October to January inclusive.

(c) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the North Pacific Ocean and dependent waters south of 40° North Latitude during the months of March to June inclusive.

TABLE 1 TO SUBPART C—BALEEN WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS (EXCLUDING BRYDE'S WHALES)

	Sei		Minke		Fin		Blue	Humpback	Right bowhead, pygmy right	Gray	
	Classification	Catch limit	Classification	Catch limit	Classification	Catch limit	Classification	classification	classification	Classification	Catch limit
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season											
Area and longitudes:											
I—120° W. to 60° W.	PS	0	-	624	PS	0	PS	PS	PS	•	•
II—60° W. to 0° W.	PS	0	-	630	PS	0	PS	PS	PS	•	•
III—0° to 70° E.	PS	0	-	1,416	PS	0	PS	PS	PS	•	•
IV—70° E. to 130° E.	PS	0	-	2,095	PS	0	PS	PS	PS	•	•
V—130° E. to 170° W.	PS	0	-	1,445	PS	0	PS	PS	PS	•	•
VI—170° W. to 120° W.	PS	0	-	778	PS	0	PS	PS		•	•
Total catch not to exceed.				6,655		0	0	0	0		
Northern Hemisphere—1984 season											
Arctic	•	•	•	•	•	•	•	•	PS	•	•
North Pacific:											
Whole region	PS	0	•	•	PS	0	PS	PS	PS	•	•
Okhotsk Sea-West Pacific Stock.	•	•	SMS	[1] 421	•	•	•	•	•	•	•
Sea of Japan-Yellow Sea-East China Sea Stock.	•	•	-	[2] 0	•	•	•	•	•	•	•
Remainder	•	•	IMS	[3] 0	•	•	•	•	•	•	•
Eastern Stock	•	•	•	•	•	•	•	•	•	SMS	[4] 179
Western Stock	•	•	•	•	•	•	•	•	•	PS	0
North Atlantic:											
Whole region	•	•	•	•	•	•	PS	PS	PS	•	•
West Greenland Stock.	•	•	-	[5, 6] 300	-	[7] 6	•	•	•	•	•
Newfoundland-Labrador Stock.	•	•	•	•	-	0	•	•	•	•	•
Canadian East Coast Stock.	•	•	-	[3] 0	•	•	•	•	•	•	•

TABLE 1 TO SUBPART C—BALEEN WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS (EXCLUDING BRYDE'S WHALES)—Continued

	Sei		Minke		Fin		Blue Classification	Humpblack classification	Right bowhead, pygmy right classification	Gray	
	Classification	Catch limit	Classification	Catch limit	Classification	Catch limit				Classification	Catch limit
Nova Scotia Stock.	PS	0	•	•	PS	0	•	•	•	•	•
Central Stock	•	•	-	291	•	•	•	•	•	•	•
East Greenland-Iceland Stock.	•	•	•	•	SMS	167	•	•	•	•	•
Iceland-Denmark Strait Stock.	SMS	[8] 100	•	•	•	•	•	•	•	•	•
Spain-Portugal-British Isles Stock.	•	•	•	•	-	[9] 120	•	•	•	•	•
Northeastern Stock.	•	•	-	635	•	•	•	•	•	•	•
West Norway-Faroe Islands Stock.	•	•	•	•	PS	0	•	•	•	•	•
North Norway Stock.	•	•	•	•	-	0	•	•	•	•	•
Eastern Stock	-	0	•	•	•	•	•	•	•	•	•
Northern Indian Ocean.	•	•	IMS	[3] 0	•	•	PS	PS	PS	•	•

[1] The total catch of minke whales shall not exceed 1,678 in the five years 1980 to 1984 inclusive.
[2] Provided that the remainder from the previous block quota of 3,634 for the five years 1980 to 1984 inclusive may be taken in the years 1984 and 1985.
[3] Pending a satisfactory estimate of stock size.
[4] Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to § 351.36(b)(3).
[5] The total catch of minke whales shall not exceed 588 in the two years 1984 and 1985 inclusive.
[6] Of the total numbers shown, a proportion corresponding to needs may be taken by aborigines pursuant to § 351.36(b)(4).
[7] Available to be taken by aborigines pursuant to § 351.36(b)(4).
[8] The total catch of sei whales shall not exceed 504 in the six years 1980 to 1985 inclusive.
[9] The total catch of fin whales shall not exceed 270 in the three years 1983 to 1985 inclusive.

[49 FR 1523, Jan. 12, 1984; 49 FR 3086, Jan. 25, 1984]

TABLE 2 TO SUBPART C—BRYDE'S WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

	Classification	Catch limit
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season		
South Atlantic Stock		0
Southern Indian Ocean Stock	IMS	[1] 0
South African Inshore Stock		0
Solomon Islands Stock	IMS	[1] 0
Western South Pacific Stock	IMS	[1] 0
Eastern South Pacific Stock	IMS	[1] 0
Peruvian Stock		[2] [3] 165
North Pacific—1984 season		
Eastern Stock	IMS	[1] 0
Western Stock	IMS	536
East China Sea Stock		0
North Atlantic—1984 season	IMS	[1] 0
Northern Indian Ocean—1984 season		0

[1] Pending a satisfactory estimate of stock size.

[2] Available to be taken in a six month period starting in November 1983.

[3] The catch limit for this stock for the 1985 season will be lower than 165 and thereafter shall be zero until the Commission decides otherwise.

[49 FR 1523, Jan. 12, 1984; 49 FR 3086, Jan. 25, 1984]

TABLE 3 TO SUBPART C—TOOTHED WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

	Sperm		Bottlenose classification
	Classification	Catch limit	
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season			
Division and longitudes:			
1—60° W. to 30° W	-	0	-
2—30° W. to 20° E	-	0	-
3—20° E. to 60° E	-	0	-
4—60° E. to 90° E	-	0	-
5—90° E. to 130° E	-	0	-
6—130° E. to 160° E	-	0	-
7—160° E. to 170° W	-	0	-
8—170° W. to 100° W	-	0	-
9—100° W. to 60° W	-	0	-
Northern Hemisphere—1984 season			
North Pacific:			
Western Division	-	[1, 2]	[3] PS
Eastern Division	-	0	
North Atlantic	-	0	
Northern Indian Ocean	-	0	

[1] No whales may be taken from this stock until catch limits including any limitations on size and sex are established by the Commission.

[2] Notwithstanding footnote 1, catch limits for the 1982 and 1983 coastal seasons are 450 and 400 whales respectively, provided that included within each of these catch limits there may be a by-catch of females not to exceed 11.5% and all whaling operations for this species shall cease for the rest of each season when the by-catch is reached.

[3] Provisionally listed as PS for 1984 pending the accumulation of sufficient information for classification.

[49 FR 1523, Jan. 12, 1984; 49 FR 3086, Jan. 25, 1984]

Subpart D—Treatment

§ 351.51 Processing of whales.

(a) It is forbidden to use a factory ship or a land station for the purpose of treating any whales which are classified as Protection Stocks in § 351.34 or are taken in contravention of §§ 351.21, 351.22, 351.23, 351.30, 351.31, 351.32, 351.35, and 351.39 of this part, whether or not taken by whale catchers under the jurisdiction of a Contracting Government.

(b) All other whales taken, except minke whales, shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and of parts of whales intended for human food or feeding animals. A Contracting Government may in less developed regions exceptionally permit treating of whales without use of land stations, provided that such whales are fully utilized in accordance with this section.

(c) Complete treatment of the carcases of "dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

§ 351.52 Regulation of processing.

(a) The taking of whales for treatment by a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is hauled up for treatment.

(b) Whales taken by all whale catchers, whether for factory ships or land stations, shall be clearly marked so as to identify the catcher and to indicate the order of catching.

Subpart E—Supervision and Control

§ 351.61 Inspection.

(a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four-hour inspection provided that at least one such inspector shall be maintained on each catcher functioning as a factory ship. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship; provided that inspectors need not be appointed to ships which, apart from the storage of products, are used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

(b) Adequate inpsection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

(c) There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries. The observers shall be appointed by the Commisson acting through its Secretary and paid by the Government nominating them.

§ 351.62 Remuneration of employees.

Gunners and crews of factory ships, land stations, and whale catchers, shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of lactating whales.

§ 351.63 Measurement of whales.

(a) Whales must be measured when at rest on deck or platform after the hauling out wire and grasping device have been released, by means of a tape-measure made of a non-stretching material. The zero end of the tape-measure shall be attached to a spike or stable device to be positioned on the deck or platform abreast of one end of the whale. Alternatively the spike may be stuck into the tail fluke abreast of the apex of the notch. The tape-measure shall be held taut in a straight line parallel to the deck and the whale's body, and other than in exceptional circumstances along the whale's back, and read abreast of the other end of the whale. The ends of the whale for measurement purposes shall be the tip of the upper jaw, or in sperm whales the most forward part of the head, and the apex of the notch between the tail flukes.

(b) Measurements shall be logged to the nearest foot or 0.1 metres. That is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. Similarly, any whale between 10.15 metres and 10.25 metres shall be logged as 10.2 metres, and any whale between 10.25 metres and 10.35 metres shall be logged as 10.3 metres. The measurement of any whale which falls on an exact half foot or 0.05 metre shall be logged at the next half foot or 0.05 metre, e.g. 76 feet 6 inches precisely shall be logged as 77 feet and 10.25 metres precisely shall be logged as 10.3 metres.

Subpart F—Information Required

§ 351.71 Reports and records.

(a) All whale catchers operating in conjunction with a factory ship shall report by radio to the factory ship:

(1) The time when each whale is taken;

(2) Its species; and

(3) Its marking effected pursuant to § 351.52(b).

(b) The information specified in paragraph (a) of this section shall be entered immediately by a factory ship in a permanent record which shall be available at all times for examination by the whaling inspectors; and in addition there shall be entered in such permanent record the following information as soon as it becomes available:

(1) Time of hauling up for treatment,

(2) Length, measured pursuant to § 351.63,

(3) Sex,

(4) If female, whether lactating,

(5) Length and sex of foetus, if present, and

(6) A full explanation of each infraction.

(c) A record similar to that described in paragraph (b) of this section shall be maintained by land stations, and all of the information mentioned in the said paragraph shall be entered therein as soon as available.

(d) A record similar to that described in paragraph (b) of this section shall be maintained by "small-type whaling" operations conducted from shore or by pelagic fleets, and all of this information mentioned in the said paragraph shall be entered therein as soon as available.

(e) All Contracting Governments shall report to the Commission for all whale catchers operating in conjunction with factory ships and land stations the following information:

(1) Methods used to kill each whale, other than a harpoon, and in particular compressed air, and

(2) Number of whales struck but lost.

(f) A record similar to that described in paragraph (e) of this section shall be maintained by vessels engaged in "small-type whaling" operations and by native peoples taking species listed in § 351.1, and all the information mentioned in the said paragraph shall be entered therein as soon as available, and forwarded by Contracting Governments to the Commission.

§ 351.72 Submission of catch data and notification of closure.

(a) Notification shall be given in accordance with the provision of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of baleen whales by species taken in any waters south of 40° South Latitude by all factory ships or whale catchers attached thereto under the jurisdiction of each Contracting Government, provided that when the number of each of these species taken is deemed by the Bureau of International Whaling Statistics to have reached 85 percent of whatever total catch limit is imposed by the Commission notification shall be given as aforesaid at the end of each day of data on the number of each of these species taken.

(b) If it appears that the maximum catches of whales permitted by § 351.35(a) may be reached before 7th of April of any year, the Bureau of International Whaling Statistics shall determine, on the basis of the data provided, the date on which the maximum catch of each of these species shall be deemed to have been reached and shall notify the master of each factory ship and each Contracting Government of that date not less than four days in advance thereof. The taking or attempting to take baleen whales, so notified, by factory ships or whale catchers attached thereto shall be illegal in any waters south of 40° South Latitude after midnight of the date so determined.

(c) Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

§ 351.73 Submission of statistical data.

(a) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) Concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and

(2) As to the aggregate amounts of oil of each grade and quantities of meal, fertilizer (guano), and other products derived from them, together with

(3) Particulars with respect to each whale treated in the factory ship, land station or "small-type whaling" operations as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus. The data referred to in paragraphs (a)(1) and (3) of this section shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration of whales.

(b) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) The name and gross tonnage of each factory ship, and

(2) For each catcher ship attached to a factory ship or land station:

(i) The dates on which each is commissioned and ceases whaling for the season,

(ii) The number of days on which each is at sea on the whaling grounds each season, and

(iii) The gross tonnage, horsepower, length and other characteristics of each; vessels used only as tow boats should be specified.

(3) A list of the land stations which were in operation during the period concerned, and the number of miles searched per day by aircraft, if any.

(c) The information required under paragraph (b)(2)(iii) of this section should also be recorded together with the following information, in the log book format shown in Appendix A, and forwarded to the Commission:

(1) Where possible the time spent each day on different components of the catching operation, and

(2) Any modifications of the measures in paragraphs (b)(2)(i) through (iii) or (c)(1) or data from other suitable indicators of fishing effort for "small-type whaling" operations.

§ 351.74 Collection of specimens.

(a) Where possible all factory ships and land stations shall collect from each whale taken and report on:

(1) Both ovaries or the combined weight of both testes, and

(2) At least one ear plug, or one tooth (preferably first mandibular).

(b) Where possible similar collections to those described in paragraph (a) of this section shall be undertaken and reported by small-type whaling operations conducted from shore or by pelagic fleets.

(c) All specimens collected under paragraphs (a) and (b) of this section shall be properly labeled with the platform or other identification number of the whale and be appropriately preserved.

(d) Contracting Governments shall arrange for the analysis as soon as possible of the tissue samples and specimens collected under paragraphs (a) and (b) of this section and report to the Commission on the results of such analyses.

§ 351.75 Review of scientific permits.

(a) A Contracting Government shall provide the Secretariat with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. The proposed permits should specify:

(1) Objectives of the research;

(2) Number, sex, size and stock of the animals to be taken;

(3) Opportunities for participation in the research by scientists of other nations; and

(4) Possible effect on conservation of the stock.

(b) Proposed permits shall be reviewed and commented on by the Scientific Committee at annual meetings when possible. When permits would be granted prior to the next annual meeting, the Secretary shall send the proposed permits to members of the Scientific Committee by mail for their comment and review. Preliminary results of any research from the permits should be made available at the next annual meeting of the Scientific Committee.

§351.76 Submission of laws and regulations.

A Contracting Government shall transmit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations.

APPENDIX A

INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING 1946, SCHEDULE APPENDIX A—TITLE PAGE

(One logbook per catcher per season)

Catcher name———— Year built———
Attached to expedition/land station ———
Season ————————————————
Overall length———— Wooden/steel hull
Gross tonnage ——————————————
Type of engine———— H.P.———
Maximum speed———— Average searching speed———
Asdic set, make and model no. ————————
Date of installation ——————————
Make and size of cannon ————————
Type of first harpoon used ——— explosive/electric/non-explosive
Type of killer harpoon used——————
Length and type of forerunner —————
Type of whaleline ——————————
Height of barrel above sea level——————
Speedboat used, Yes ☐ No ☐
Name of Captain ——————————
Number of years experience ——————
Name of gunner ———————————
Number of years experience ——————
Number of crew ———————————

TABLE 1—DAILY RECORD SHEET

Date——— Catcher name——— Sheet No.———

Searching:
- Time started (or resumed) searching ....
- Time whales seen *or reported to catcher*[1] ....
- Whale species ....
- Number seen and no. of groups ....
- Position found ....
- Name of catcher that found whales ....

Chasing:
- Time started chasing (or confirmed whales) ....
- Time whale shot or chasing discontinued ....
- Asdic used (Yes ☐ No ☐) ....

Handling:
- Time whale flagged or alongside for towing ....
- Serial no. of catch ....

Towing:
- Time started picking up ....
- Time finished picking up or starting towing ....
- Date and time delivered to factory ....

Resting:
- Time stopped (for drifting or resting) ....
- Time finished drifting/resting ....
- Time ceased operations ....

Total searching time ....
Total chasing time:
- (A) With asdic ....
- (B) Without asdic ....

Total handling time ....
Total towing time ....
Total resting time ....
Other time (e.g. bunkering, in port) ....

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[1] Time whales reported to catcher means the time when the catcher is told of the position of a school and starts to move towards it to chase it.

Weather Conditions

Time	Sea state	Wind force and direction	Visibility

Whales Seen (No. and No. of schools)

Blue ....
Fin ....
Humpback ....
Right ....
Sei ....
Bryde ....
Minke ....
Sperm ....
Others ....
(specify) ....

Signed ....

TABLE 2—SCHOOLING REPORT

To be completed by pelagic expedition or coastal station for each sperm whale school chased. A separate form to be used each day.

Name of expedition or coastal station ....

Date ——— Noon position of factory ship ....

Time school found ....

Total number of whales in school ....

Number of takeable whales in school ....

Number of whales caught from school by each catcher ....

Name of catcher ....

Name of catcher ....

Name of catcher ....

Name of catcher ....

Total number caught from school ....

Remarks: ....

Explanatory Notes

A. Fill in one column for each school chased with number of whales caught by each catcher taking part in the chase; if catchers chase the school but do not catch any whales from it, enter 0; for catchers in fleet which do not chase that school enter X.

B. A school on this form means a group of whales which are sufficiently close together that a catcher having completed handling one whale can start chasing another whale almost immediately without spending time searching. A solitary whale should be entered as a school of 1 whale.

C. A takeable whale is a whale of a size or kind which the catchers would take if possible. It does not necessarily include all whales above legal size, e.g. if catchers are concentrating on large whales only these would be counted as takeable.

D. Information about catchers from other expeditions or companies operating on the same school should be recorded under Remarks.

[45 FR 85031, Dec. 24, 1980, as amended at 47 FR 3794, Jan. 27, 1982]

SUBCHAPTER C—PACIFIC SALMON COMMISSION

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON FISHERIES

Subpart A—General Provisions

Sec.

371.1 Purpose and scope.
371.2 Definitions.
371.3 Relation to other laws.
371.4 Reporting requirements.
371.5 General restrictions.
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371.7 Treaty Indian fisheries.
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371.9 Penalties.

Subpart B—Management Measures

371.20 Annual actions.
371.21 Inseason orders.

AUTHORITY: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

SOURCE: 51 FR 23421, June 27, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 371.1 Purpose and scope.

This part applies to all fishing for Fraser River sockeye and pink salmon and related activities conducted by nationals and vessels of the United States in U.S. waters within the Fraser River Panel Area during the times the Pacific Salmon Commission exercises jurisdiction over these fisheries. It is promulgated in cooperation with the Pacific Fishery Management Council, the State of Washington, and treaty Indian tribes, and is in addition to and not in conflict with the fishery regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985.

§ 371.2 Definitions.

Act means the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631-3644.

All-citizen means any person who is not a treaty Indian fishing in that treaty Indian's tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

Authorized Officer means—

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any federal or state agency which has entered into an agreement with the Secretary of Commerce and the Secretary of Transportation to enforce the Act;

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

(e) Any State, Federal, or other officer as may be authorized by the Secretary of Commerce in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

Commission means the Pacific Salmon Commission established by the Pacific Salmon Treaty.

Consistent regulation or consistent order means any Federal, State, or treaty Indian tribal regulation or order which is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations on the water in support of, or in preparation for, any activity described in paragraph (a) through (c) of this definition.

Fishing gear—

(a) *Gill net* means a fishing net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

(b) *Purse seine* means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(c) *Reef net* means a non-self-fishing open bunt square or rectangular section of mesh netting suspended between two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(d) *Troll fishing gear* means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(e) *Treaty Indian fishing gear* means fishing gear defined authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fraser River Panel means the Fraser River Panel established by the Pacific Salmon Treaty.

Fraser River Panel Area (*U.S.*) means the United States' portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(a) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° north latitude, excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Beale and all the waters of Nitinat Lake and the entrance thereto.

(b) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (a) above, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Whidbey Island thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway (Burlington Northern Railroad), thence northerly following the shoreline of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, then westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shoreline to Welcome Point on Sechelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island, to the starting point at Bonilla Point, as shown on the British Admiralty Chart Number 579, and on the United States Coast and Geodetic Survey Chart Number 6300, as corrected to March 14, 1930, copies of which are annexed to the 1930 Convention between Canada and the United States of America for Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System as amended, signed May 26, 1930. [Note: United States Coast and Geodetic Survey Chart Number 6300 has been replaced and updated by NOAA Chart Number 18400.]

(c) The Fraser River and the streams and lakes tributary thereto.

(d) The Fraser River Panel Area (U.S.) includes Puget Sound Management and Catch Reporting Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 7D, and 7E as defined in the Washington State Administrative Code at Chapter 220-22 as of the effective date of this part.

Fraser River Panel regulations means regulations applicable to the Fraser River Panel Area which are recommended by the Commission (on the basis of proposals made by the Fraser River Panel) and approved by the Secretary of State.

Magnuson Act means the Magnuson Fishery Conservation and Management Act at 16 U.S.C. 1801 *et seq.*

Mesh size means the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh of a net.

Pacific Salmon Treaty means the Treaty Between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985, Treaty Doc. 99-2, 99th Cong. 1st Sess.

Person means any individual (whether or not a citizen or national of the United States), including treaty Indians, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State).

Pink salmon means the species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

Secretary means the Secretary of Commerce or a designee.

Sockeye salmon means the anadromous form of the species of salmon known by the scientific name *Oncorhynchus nerka.*

Treaty fishing places (of an Indian tribe) means locations within the Fraser River Panel Area (U.S.) as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), to be places at which that treaty Indian tribe may take fish under rights secured by treaty with the United States.

Treaty Indian means any member of a treaty Indian tribe whose treaty fishing place is in the Fraser River Panel Area (U.S.) or any assistant to a treaty Indian authorized to assist in accordance with § 371.7(d).

Treaty Indian tribe means any of the federally recognized Indian tribes of the State of Washington having fishing rights secured by treaty with the United States to fish for salmon stocks subject to the Pacific Salmon Treaty in treaty fishing places within the Fraser River Panel Area (U.S.). Currently these tribes are the Makah Tribe, Lower Elwha Klallam Tribe, Port Gamble Klallam Tribe, Jamestown Klallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribe.

§ 371.3 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) with respect to fishing activities addressed herein.

(b) Any person fishing subject to this part is bound by the international boundaries now recognized by the United States within the Fraser River Panel Area (U.S.) described in § 371.2 of this part, notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the U.S. fishery conservation zone (as defined in 16 U.S.C. 1811) should consult Federal regulations at 50 CFR Part 663 for applicable requirements of that part, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 663.6 of that part. Federal regulations governing salmon fishing in the U.S. fishery conservation zone, which includes a portion of the Fraser River Panel Area (U.S.), are at 50 CFR Part 661. (Annual regulatory modifications are published in the FEDERAL REGISTER.)

(d) Except as otherwise provided in this part, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR Part 249, Subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this part relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

§ 371.4 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220 -69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

§ 371.5 General restrictions.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to sockeye and pink salmon fishing in the Fraser River Panel Area (U.S.):

(1) The Fraser River Panel Area (U.S.) is closed to sockeye and pink salmon fishing unless opened by Fraser River Panel regulations or by inseason orders of the Secretary issued under § 371.21 that give effect to orders of the Fraser River Panel, unless such orders are determined not to be consistent with domestic legal obligations. Such regulations and inseason orders may be further implemented by regulations promulgated by the United States the State of Washington, or any treaty Indian tribe, which are also consistent with domestic legal obligations.

(2) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for, or take and retain, any sockeye or pink salmon:

(i) Except during times or in areas that are opened by Fraser River Panel regulations or by inseason order of the Secretary, except that this provision will not prohibit the direct transport of legally-caught sockeye or pink salmon to offloading areas;

(ii) By means of gear or methods not authorized by Fraser River Panel regulations, inseason orders of the Secretary, or other applicable Federal, State, or treaty Indian tribal law;

(iii) In violation of any applicable area, season, species, zone, gear, or mesh size restriction.

(b) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to—

(1) Remove the head of any sockeye or pink salmon caught in the Fraser River Panel Area (U.S.), or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been inplanted in the head of the fish;

(2) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Act; or

(3) Fail to permit an authorized officer to inspect a record or report required by the State of Washington or treaty Indian tribal authority, or to inspect a fish landing, holding, storage, or processing area under the person's control;

(c) Notwithstanding paragraph (a) of this section, nothing in this part will be construed to prohibit the retention of sockeye or pink salmon caught by any person while lawfully engaged in a fishery for subsistence or ceremonial purposes pursuant to treaty Indian tribal regulations, for recreational purposes pursuant to recreational fishing regulations promulgated by the State of Washington, or as otherwise authorized by treaty Indian tribal or State of Washington law or regulation, provided that such treaty Indian tribal or State regulation is consistent with U.S.-approved Commission fishery regimes, Fraser River Panel regulations, or inseason orders of the Secretary applicable to fishing in the Fraser River Panel Area (U.S.).

§ 371.6 Fishing gear restrictions.

The following types of fishing gear are authorized, subject to the restrictions set forth in this part and according to the times and areas established by Fraser River Panel regulations or inseason orders of the Secretary:

(a) All citizens: Gill net, purse seine, reef net, and troll fishing gear. Specific restrictions, on all citizens gear are contained in the Washington State Administrative Code of Chapter 220-47.

(b) Treaty Indians: Treaty Indian fishing gear.

§ 371.7 Treaty Indian fisheries.

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe's treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over these fisheries. Fishing by a treaty Indian outside the applicable Indian tribe's treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders of the Secretary applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington,* 384 F. Supp. 312 (W.D. Wash. 1974).

(c) *Identification.* (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times while fishing or engaged in any activity related to fishing the treaty Indian identification required by 25 CFR 249.3 or by applicable tribal law.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(4) Any treaty Indian fishing under this subpart must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington,* 384 F. Supp. 312 (W.D. Wash. 1974).

(d) *Fishing assistance.* (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian's tribe, receive fishing assistance from and only from the treaty Indian tribal member's spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in *United States v. Washington,* 384 F. Supp. 312 (W.D. Wash. 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this part.

(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian's gear or location.

(3) Treaty Indians are prohibited from paricipating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries

management organization, the Northwest Indian Fisheries Commission, the Pacific Salmon Commission, or a fisheries management agency of the United States or the State of Washington.

§ 371.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. U.S. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and the boarding party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and the boarding party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-)[1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "You should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

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[1] Period (.) means a short flash of light. Dash (-) means a long flash of light.

(3) "SQ3" (... --.- ...--) means "You should stop or heave to; I am going to board you."

(4) "L" (.-..) means "You should stop your vessel instantly."

§ 371.9 Penalties.

(a) Any treaty Indian who commits any act that is unlawful under this part normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties described in paragraphs (b), (c), (d), or (e) of this section.

(b) Any person who commits any act that is unlawful under this part will be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. 1858).

(c) Any person who commits an act that is unlawful under paragraphs (2), (3), (4), or (6) of the Act at 16 U.S.C. 3637(a) will be guilty of an offense punishable as provided by section 309(b) of the Magnuson Act (16 U.S.C. 1859(b)).

(d) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act which is prohibited under the Act at 16 U.S.C. 3637(a) and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act which is prohibited by the Act at 16 U.S.C. 3637(a) will be subject to forfeiture as provided by section 310 of the Magnuson Act (16 U.S.C. 1860).

(e) Any fish seized pursuant to the Act or these regulations may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

Subpart B—Management Measures

§ 371.20 Annual actions.

(a) Violation of Fraser River Panel regulations is unlawful under the Act.

(b) Geographic descriptions of Puget Sound Salmon Management and Catch Reporting Areas, which are referenced in the Commission's regimes, Fraser River Panel regulations, and in inseason orders of the Secretary, are found in the Washington State Administrative Code at Chapter 220-22.

§ 371.21 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders of the Secretary will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this Part.

(b) *Notice of inseason orders.* (1) Official notice of such inseason orders issued by the Secretary is available from the National Marine Fisheries Service (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through the following Area Code 206 toll-free telephone hotlines:

All-citizen fisheries: 1-800-562-6513
Treaty Indian fisheries: 1-800-562-6142

(2) Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

(3) Inseason orders may also be communicated through news releases to radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the FEDERAL REGISTER as soon as practicable after they are issued.

(c) *Effective dates.* Inseason orders of the Secretary are effective during the times stated therein.

SUBCHAPTER D—CONVENTION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

Subpart A—General Provisions

Sec.
380.1 Purpose and scope.
380.2 Definitions.
380.3 Relationship to other treaties and laws. [Reserved]
380.4 Harvesting permits. [Reserved]
380.5 Import permits. [Reserved]
380.6 Reporting and recordkeeping requirements. [Reserved]
380.7 Vessel and gear identification. [Reserved]
380.8 Facilitation of enforcement. [Reserved]
380.9 Gear disposal. [Reserved]
380.10 Prohibitions. [Reserved]
380.11 Penalties. [Reserved]

Subpart B—Management Measures

380.20 Closed area.
380.21 Mesh size.
380.22 Catch restrictions.
380.23 Scientific research.

AUTHORITY: 16 U.S.C. 2431 *et seq.*

SOURCE: 53 FR 8768, Mar. 17, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 380.1 Purpose and scope.

(a) The purpose of this part is to conserve and protect the Antarctic marine living resources and to implement the Antarctic Marine Living Resources Convention Act of 1984.

(b) This part regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States,

(2) The harvesting of Antarctic marine living resources or other associated activity by any vessel of the United States, and

(3) The importation into the United States of any Antarctic marine living resource.

§ 380.2 Definitions.

The terms used in this part have the following meanings:

Act means the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*).

Antarctic Convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

Latitude	Longitude
50 °S	0
50 °S	30 °E.
45 °S	30 °E.
45 °S	60 °E.
55 °S	60 °E.
55 °S	150 °E.
60 °S	150 °E.
60 °S	50 °W.
50 °S	50 °W.
50 °S	0

Antarctic finfishes include the following:

Scientific name	Common name
Notothenia gibberifrons	Humped rockcod.
Notothenia rossii	Marbled rockcod.
Notothenia squamifrons	Grey rockcod.
Dissostichus eleginoides	Patagonian toothfish.
Patagonothen brevicauda guntheri.	Patagonian rockcod.
Pleuragramma antarcticum	Antarctic silverfish.
Trematomus spp	Antarctic cods.
Chaenocephalus aceratus	Blackfin icefish.
Chaenodraco wilsoni	Spiny icefish.
Champsocephalus gunnari	Mackerel icefish.
Chionodraco rastrospinosus	Ocellated icefish.
Pseudochaenichthys georgianus.	South Georgia icefish.

Antarctic marine living resources means the populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence, and their parts or products.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, DC 20235, or a designee. *Address:* National Marine Fisheries Service, Washington, DC 20235.

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commission means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention means the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980, and entered into force with respect to the United States on April 7, 1982.

Convention waters means all waters south of the Antarctic Convergence.

Directed fishing with respect to any species or stock of fish, means any fishing that results in such fish comprising more than one percent by weight, at any time, of the catch on board the vessel.

Fish means finfish, mollusks, and crustaceans.

Fishing means

(a) The catching or taking of fish;

(b) The attempted catching or taking of fish;

(c) Any other activity which can reasonably be expected to result in the catching or taking of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

Harvest means to engage in harvesting or other associated activities.

Harvesting or other associated activities means

(a) The harassing, molesting, harming, pursuing, hunting, shooting, wounding, killing, trapping, or capturing of Antarctic marine living resources;

(b) Attempting to engage in any activity set forth in paragraph (a) of this definition;

(c) Any other activity which can reasonably be expected to result in any activity described in paragraph (a); and

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

Harvesting vessel means any vessel of the United States (this includes any boat, ship, or other craft), which is used for, equipped to be used for, or of a type which is normally used for harvesting.

IRCS means International Radio Call Sign.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing constitutes an importation within the meaning of the customs laws of the United States.

Individual permit means an NSF permit issued under 45 CFR Part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under 50 CFR 216.31; or an endangered species permit issued under 50 CFR 222.21.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

NMFS means National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

NSF means National Science Foundation.

Person means an individual, partnership, corporation, trust, association, or any other entity subject to the jurisdiction of the United States.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Scientific Committee means the Scientific Committee for the Conservation of Antarctic Marine Living Resources established under Article XIV of the Convention.

Scientific research activities means any activity for which a person has a permit from NMFS under 50 CFR 216.31 or an award letter from NSF or a permit from the NSF under 45 CFR Part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

Vessel of the United States means

(a) A vessel documented under Chapter 121, Title 46, United States Code, or a vessel numbered as provided in Chapter 123 of that title;

(b) A vessel owned in whole or part by

(1) The United States or a territory, commonwealth, or possession of the United States;

(2) A State or political subdivision thereof;

(3) A citizen or national of the United States; or

(4) A corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

(c) A vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas.

Vessel subject to the jurisdiction of the United States includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the 1958 Convention on the High Seas.

§ 380.3 Relationship to other treaties and laws. [Reserved]

§ 380.4 Harvesting permits. [Reserved]

§ 380.5 Import permits. [Reserved]

§ 380.6 Reporting and recordkeeping requirements. [Reserved]

§ 380.7 Vessel and gear identification. [Reserved]

§ 380.8 Facilitation of enforcement. [Reserved]

§ 380.9 Gear disposal. [Reserved]

§ 380.10 Prohibitions. [Reserved]

§ 380.11 Penalties. [Reserved]

Subpart B—Management Measures

§ 380.20 Closed area.

Fishing is prohibited in waters within 12 nautical miles of South Georgia.

§ 380.21 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*—120 mm; and

(2) *Notothenia gibberifrons, N. kempi, N. squamifrons* and *Champsocephalus gunnari*—80 mm.

(b) Any means or device which would reduce the size or obstruct the opening of the meshes is not allowed.

(c) The following procedure will be used for assessing a mesh violation.

(1) *Description of gauges.* (i) Gauges for determining mesh sizes will be 2 millimeters (mm) thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) *Use of the gauge.* (i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) *Selection of meshes to be measured.* (i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with paragraph (c)(2) of this section.

(5) Determination of the mesh size of the net will be the arithmetical mean in millimeters of the measurements of the total number of meshes selected and measured as provided for in paragraphs (c) (3) and (4) of this section, the arithmetical mean being rounded up to the next millimeter.

(6) *Inspection procedure.* (i) One series of 20 meshes, selected in accordance with paragraph (c)(3) of this section, will be measured by inserting the gauge manually without using a weight or dynamometer. The mesh size of the net will then be determined in accordance with paragraph (c)(5) of this section. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with paragraph (c)(3) of this section will be measured. The mesh size will then be recalculated in accordance with paragraph (c)(5) of this section, taking into account the 60 meshes already measured; this recalculation will be the mesh size of the net.

(ii) If the captain of the vessel contests the mesh size determined in accordance with paragraph (c)(6)(i) of this section such measurement will not be considered for the determination of the mesh size and the net will be remeasured.

(A) A weight or dynamometer attached to the gauge will be used for remeasurement. The choice of weight or dynamometer is at the discretion of the inspectors. The weight will be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

(B) The accuracy of the weight or dynamometer must be certified by the appropriate national authority.

(C) For nets of a mesh size of 35 mm or less as determined in accordance with paragraph (c)(6)(i) of this section, a force of 19.61 newtons (equivalent to a mass of 2 kilograms) will be applied, and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kilograms).

(D) For the purposes of determining the mesh size in accordance with paragraph (c)(5) of this section, when using a weight or dynamometer, one series of 20 meshes only will be measured.

§ 380.22 Catch restrictions.

The catch limit for *N. rossii* is one percent of all Antarctic finfishes on board a vessel fishing in subareas 48.1, 48.2, 48.3, and 58.5 (see Figure 1).

§ 380.23 Scientific research.

These management measures do not apply to scientific research activities.

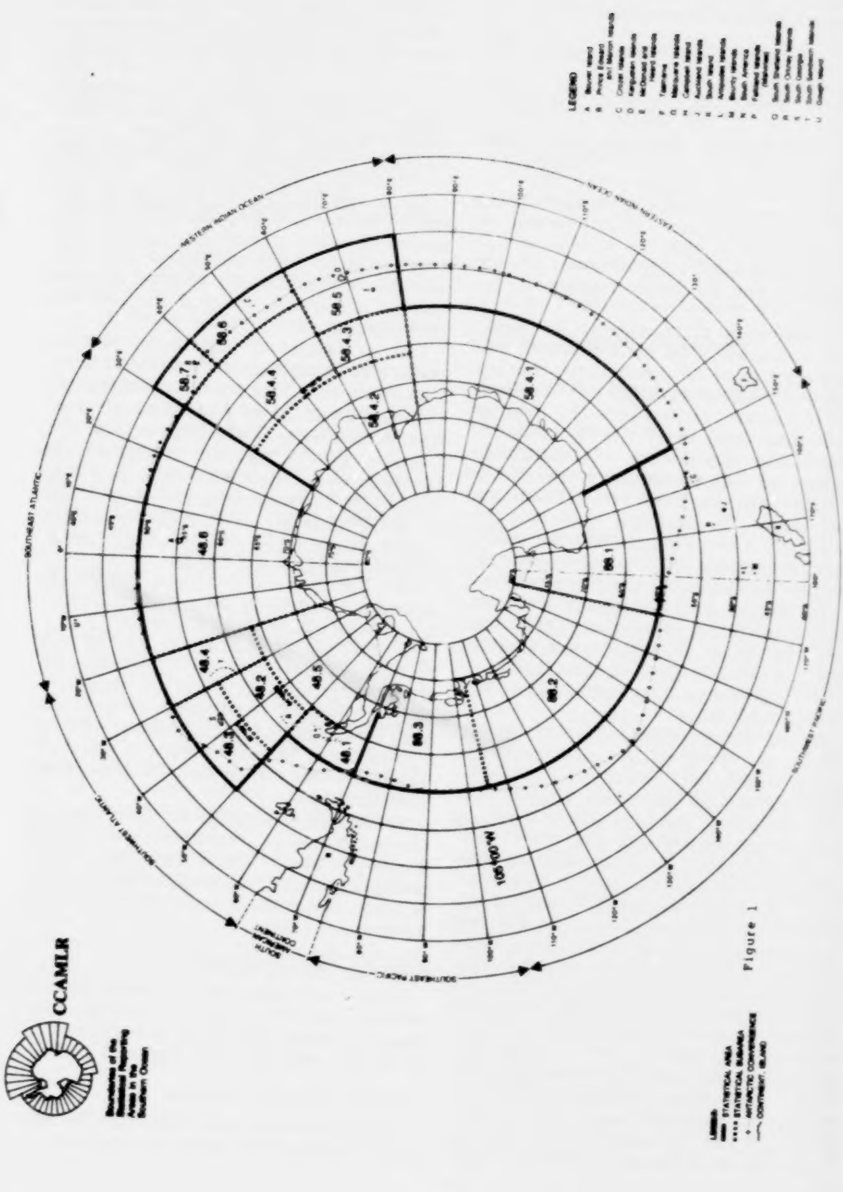
CCAMLR
Boundaries of the Statistical Reporting Areas in the Southern Ocean
WESTERN INDIAN OCEAN
EASTERN INDIAN OCEAN
SOUTHEAST ATLANTIC
SOUTHWEST ATLANTIC
SOUTHEAST PACIFIC
SOUTHWEST PACIFIC
SOUTH AMERICAN CONTINENT
58.7
58.6
58.5
58.4.3
58.4.4
58.4.2
58.4.1
88.1
88.2
88.3
48.1
48.2
48.3
48.4
48.5
48.6
105°00'W
LEGEND
STATISTICAL AREA
STATISTICAL SUBAREA
ANTARCTIC CONVERGENCE
CONTINENT, ISLAND

Figure 1

CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

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SUBCHAPTER A

PART 401—ANADROMOUS FISHERIES CONSERVATION, DEVELOPMENT AND ENHANCEMENT

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401.21 Patents and inventions.
401.22 Civil rights.
401.23 Audits.

AUTHORITY: Anadromous Fish Conservation Act (79 Stat. 1125, as amended, 84 Stat. 214, 88 Stat. 398), 16 U.S.C. 757a–757f.

SOURCE: 40 FR 26678, June 25, 1975, unless otherwise noted.

§ 401.1 Administration.

The Director of the U.S. Fish and Wildlife Service and the Director of the National Marine Fisheries Service shall jointly administer the Anadromous Fish Conservation Act for the Secretaries.

§ 401.2 Definitions.

As used in this part, terms shall have the meanings ascribed in this section.

(a) *Secretary.* The Secretary of Commerce, the Secretary of the Interior, or their authorized representatives.

(b) *Act.* The Anadromous Fish Conservation Act, 16 U.S.C. 757a through 757f.

(c) *Eligible states.* Any coastal State of the United States, the State of Vermont, and the States bordering the Great Lakes. The area within the Columbia River basin is excluded.

(d) *State fishery agency.* Any department(s), division(s), commission(s), or official(s) of a State empowered under its laws to regulate a commercial or sport fishery.

(e) *Non-Federal interest.* Any organization, association, institution, business, school, individual, or group of individuals, municipality and others outside the Federal Government, in addition to State fishery agencies, which desire to cooperate within the terms of the Act.

(f) *Cooperator.* One or more States acting jointly or severally or other non-Federal interests, participating in a project agreement or grant-in-aid award with the Secretary.

(g) *Anadromous fish.* Aquatic, gill breathing, vertebrate animals bearing paired fins which migrate to and spawn in fresh water, but which spend part of their life in an oceanic environment; also fish in the Great Lakes that ascend streams to spawn.

(h) *Application for Federal assistance.* A description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(i) *Project agreement.* The formal document executed between the Secretary of the Interior and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

(j) *Grant-in-Aid award.* The formal document executed between the Secretary of Commerce and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

§ 401.3 Submission of documents.

Applications for Federal assistance and other documents for projects relating generally to recreational fisheries shall be submitted to the concerned Regional Office of the U.S. Fish and Wildlife Service, or for projects relating generally to commercial fisheries of the concerned Regional Office of the National Marine Fisheries Service.

§ 401.4 Activities prohibited.

Law enforcement, public relations, harvesting, marketing and processing activities, construction of fisherman use facilities, and activities concerned with landlocked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act.

§ 401.5 Coordination with States.

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

[48 FR 29137, June 24, 1983]

§ 401.6 Prosecution of work.

(a) Project work shall be carried through to a state of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory performance reports or failure to complete the project to the satisfaction of the Secretary shall be cause for suspension of Federal assistance for the project until the project provisions are satisfactorily met. Federal assistance may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work at any time.

(b) Research and development work shall be continuously coordinated by the Cooperator with studies conducted by others to avoid unnecessary duplication.

(c) All work shall be performed in accordance with applicable local laws, except when in conflict with Federal laws or regulations, in which case Federal laws or regulations shall prevail.

§ 401.7 General information for the Secretary.

Before any Federal funds may be obligated for any project an applicant shall furnish to the Secretary, upon his request, information regarding the laws affecting anadromous fish and the authority of the applicant to participate in the benefits of the Act.

(a) *Document signature.* Individuals authorized to sign project documents under the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197, as amended), 16 U.S.C. 779 through 779f, or the Federal Aid in Sport Fish Restoration Act (64 Stat. 430, as amended), 16 U.S.C. 777 through 777f, may likewise sign project documents contemplated in this part.

(b) *Program information.* The Secretary may, from time to time, request, and the Cooperators shall furnish, information relating to the administration and maintenance of any project established under the Act.

§ 401.8 Availability of funds.

The period of availability of funds to the States or other non-Federal interests for obligation shall be established by the administering Federal agency.

§ 401.9 Payments to cooperators.

Payments shall be made to Cooperators in accordance with provisions of grant-in-aid awards or project agreements.

§ 401.10 Request for payment.

Request for payment shall be on forms provided by the Secretary, certified as therein prescribed, and submitted to the Regional Director by the Cooperator.

§ 401.11 Property as matching funds.

The non-Federal share of the cost of projects may be in the form of real or personal property. Specific procedures to be used by grantees in placing the value on real or personal property for matching funds are set forth in Attachment F of Federal Management Circular 74-7.

§ 401.12 Ownership of property.

When real property is acquired pursuant to the provisions of the Act, title to such property, or interests therein, shall be vested in the United States, and the conveying instrument shall recite the United States of America as the grantee. However, if the Secretary determines that under the terms of the application for Federal assistance and grant-in-aid award or project agreement, the intent and purpose of the Act may be better served by other ownership of such property, an appropriate transfer may be made. When real or personal property is utilized as matching funds, title to such property shall be in the Cooperator unless otherwise specified in the grant-in-aid award or project agreement.

§ 401.13 Personnel.

The Cooperator shall maintain an adequate and competent force of employees to initiate and carry approved work to satisfactory completion.

§ 401.14 Inspection.

Cooperator supervision of each project shall include adequate and continuous inspection. The project will be subject at all times to Federal inspection.

§ 401.15 Record retention.

All records of accounts and reports with supporting documentation thereto, as set forth in Attachment C of Federal Management Circular 74-7, will be retained by the Cooperator for a period of 3 years after submission of the final expenditure report on the project. Record retention for a period longer than 3 years is required if audit findings have not been resolved.

§ 401.16 Records and reporting.

Performance reports and other reports shall be furnished as requested by the Secretary. Cost records shall be maintained separately for each project. The accounts and records maintained by the Cooperator, together with all supporting documents, shall be open at all times to the inspection of authorized representatives of the United States, and copies thereof shall be furnished when requested.

(Approved by the Office of Management and Budget under control number 0648-0102)

[40 FR 26678, June 25, 1975, as amended at 48 FR 57302, Dec. 29, 1983]

§ 401.17 Safety and accident prevention.

In the performance of each project, the Cooperator shall comply with all applicable Federal, State, and local laws governing safety, health and sanitation.

§ 401.18 Contracts.

A Cooperator may use its own regulations or guidelines in obtaining services by contract or otherwise, provided that they adhere to applicable Federal laws, regulations, policies, guidelines, and requirements, as set forth in Attachment 0 of Federal Management Circular 74-7. However, the Cooperator is the responsible authority, without recourse to the Federal agency, regarding the settlement of such contractual issues.

§ 401.19 Statements and payrolls.

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as amended, are made a part of the regulations in this part by reference. The Cooperator will comply with the regulations in this part and any amendments or modifications thereof, and the Cooperator's prime contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitation, variations, tolerances, and exemptions.

§ 401.20 Officials not to benefit.

No Member of, or Delegate to, Congress, or resident Commissioner, shall be admitted to any share or any part of any project agreement made under the Act, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

§ 401.21 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the "Government Patent Policy" (President's memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

§ 401.22 Civil rights.

Each application for Federal assistance, grant-in-aid award, or project agreement shall be supported by a statement of assurances executed by the Cooperator providing that the project will be carried out in accordance with Title VI, Nondiscrimination in federally Assisted Programs of the Civil Rights Act of 1964 and with the Secretary's regulations promulgated thereunder.

§ 401.23 Audits.

The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P OMB Circular A-102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

[49 FR 30074, July 26, 1984]

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

Subpart A—General

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AUTHORITY: 16 U.S.C. 1531 *et seq.*

SOURCE: 51 FR 19957, June 3, 1986, unless otherwise noted.

Subpart A—General

§ 402.01 Scope.

(a) This part interprets and implements sections 7(a)-(d) [16 U.S.C. 1536(a)-(d)] of the Endangered Species Act of 1973, as amended ("Act"). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical ("critical habitat"). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR Parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)-(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR Part 451, and regulations governing the exemption process are found at 50 CFR Parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR Part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

§ 402.02 Definitions.

"*Act*" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

"*Action*" means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.

"*Action area*" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

"*Applicant*" refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

"*Biological assessment*" refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

"*Biological opinion*" is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

"*Conference*" is a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

"*Conservation recommendations*" are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

"*Critical habitat*" refers to an area designated as critical habitat listed in 50 CFR Parts 17 or 226.

"*Cumulative effects*" are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

"*Designated non-Federal representative*" refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

"*Destruction or adverse modification*" means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

"*Director*" refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

"*Early consultation*" is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

"*Effects of the action*" refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

"*Formal consultation*" is a process between the Service and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

"*Incidental take*" refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

"*Informal consultation*" is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

"*Jeopardize the continued existence of*" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

"*Listed species*" means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

"*Major construction activity*" is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].

"*Preliminary biological opinion*" refers to an opinion issued as a result of early consultation.

"*Proposed critical habitat*" means habitat proposed in the FEDERAL REGISTER to be designated or revised as critical habitat under section 4 of the Act for any listed or proposed species.

"*Proposed species*" means any species of fish, wildlife, or plant that is proposed in the FEDERAL REGISTER to be listed under section 4 of the Act.

"*Reasonable and prudent alternatives*" refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

"*Reasonable and prudent measures*" refer to those actions the Director believes necessary or appropriate to minimize the impacts, *i.e.*, amount or extent, of incidental take.

"*Recovery*" means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

"*Service*" means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

§ 402.03 Applicability.

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

§ 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service. Such counterpart regulations shall be published in the FEDERAL REGISTER in proposed form and shall be subject to public comment for at least 60 days before final rules are published.

§ 402.05 Emergencies.

(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)-(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

§ 402.06 Coordination with other environmental reviews.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*, implemented at 40 CFR Parts 1500-1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligations to comply with the procedures set forth in this part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

§ 402.08 Designation of non-Federal representative.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

§ 402.09 Irreversible or irretrievable commitment of resources.

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

Subpart B—Consultation Procedures

§ 402.10 Conference on proposed species or proposed critical habitat.

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in § 402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

§ 402.11 Early consultation.

(a) *Purpose.* Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) *Request by prospective applicant.* If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) *Initiation of early consultation.* If the Federal agency receives the prospective applicant's certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in § 402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in § 402.12.

(d) *Procedures and responsibilities.* The procedures and responsibilities for early consultation are the same as outlined in § 402.14(c)-(j) for formal consultation, except that all references to the "applicant" shall be treated as the "prospective applicant" and all references to the "biological opinion" or the "opinion" shall be treated as the "preliminary biological opinion" for the purpose of this section.

(e) *Preliminary biological opinion.* The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) *Confirmation of preliminary biological opinion as final biological opinion.* A preliminary biological opinion may be confirmed as a biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency's request, the Service shall either:

(1) Confirm that the preliminary biological opinion stands as a final biological opinion; or

(2) If the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

§ 402.12 Biological assessments.

(a) *Purpose.* A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) *Preparation requirement.* (1) The procedures of this section are required for Federal actions that are "major construction activities"; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

(c) *Request for information.* The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

(d) *Director's response.* Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under § 402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

(e) *Verification of current accuracy of species list.* If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

(f) *Contents.* The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.

(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) *Incorporation by reference.* If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) *Permit requirements.* If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and Part 17 of this title (with respect to species under the jurisdiction of the FWS) or Parts 220, 222, and 227 of this title (with respect to species under the jurisdiction of the NMFS) is required.

(i) *Completion time.* The Federal agency or the designated non- Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(j) *Submission of biological assessment.* The Federal agency shall submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment. At the option of the Federal agency, formal consultation may be initiated under § 402.14(c) concurrently with the submission of the assessment.

(k) *Use of the biological assessment.* (1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under § 402.14 or § 402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.

(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

§ 402.14 Formal consultation.

(a) *Requirement for formal consultation.* Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under § 402.12 or as a result of informal consultation with the Service under § 402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under § 402.11, is confirmed as the final biological opinion.

(c) *Initiation of formal consultation.* A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with § 402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) *Responsibility to provide best scientific and commercial data available.* The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) *Duration and extension of formal consultation.* Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

(f) *Additional data.* When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to

§ 402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service's request for additional data is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion using the best scientific and commercial data available.

(g) *Service responsibilities.* Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.

(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service's review and evaluation conducted under paragraphs (g)(1) through (3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2). The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) *Biological opinions.* The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "jeopardy biological opinion"); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "no jeopardy" biological opinion). A "jeopardy" biological opinion shall include reasonable and prudent alternatives, if

any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) *Incidental take.* (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraph (i)(1)(ii) above; and

(iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45(FWS) and 222.23(d)(NMFS).

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinitiate consultation immediately.

(j) *Conservation recommendations.* The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) *Incremental steps.* When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and

(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(l) *Termination of consultation.* (1) Formal consultation is terminated with the issuance of the biological opinion.

(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.

(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated.

§ 402.15 Responsibilities of Federal agency following issuance of a biological opinion.

(a) Following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its section 7 obligations and the Service's biological opinion.

(b) If a jeopardy biological opinion is issued, the Federal agency shall notify the Service of its final decision on the action.

(c) If the Federal agency determines that it cannot comply with the requirements of section 7(a)(2) after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR Part 451.

§ 402.16 Reinitiation of formal consultation.

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

(a) If the amount or extent of taking specified in the incidental take statement is exceeded;

(b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;

(c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

(d) If a new species is listed or critical habitat designated that may be affected by the identified action.

PART 403—TRANSFER OF MARINE MAMMAL MANAGEMENT AUTHORITY TO STATES

Sec.
403.01 Purpose and scope of regulations.
403.02 Definitions.
403.03 Review and approval of state request for management authority.
403.04 Determinations and hearings under section 109(c) of the MMPA.
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403.08 List of states to which management has been transferred.

AUTHORITY: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

SOURCE: 48 FR 22456, May 18, 1983, unless otherwise noted.

§ 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this part shall prevent:

(1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with § 18.22 or § 216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§ 403.03, 403.06, and 403.07 of this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this part:

(a) The term "species" includes any population stock.

(b) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(c) "State management program" means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) "State regulation" means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

(e) The "Act" means the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

(f) The " Secretary" means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members, other than walruses, of the order Pinnipedia; the Secretary of the Interior has jurdisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The "Service" or "Services" means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this part to be made by the "Service" must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegees, as appropriate.

§ 403.03 Review and approval of state request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service ("Assistant Administrator") for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraphs (d) (1) through (3) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 403.04 of this part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 403.05(a) of this part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to § 403.04 of this part; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;

(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under § 18.31 or § 216.31 of this title; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.

(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to § 403.04.

(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to § 403.05(a) of this part.

(5) Procedures for the submission of an annual report meeting the requirements of § 403.06(b) of this part to the appropriate Service regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to:

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species—

(1) A statute and regulations concerning the take of marine mammals that ensure that

(i) The taking of marine mammals species for subsistence uses will be the priority consumptive uses of the species;

(ii) If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and

(iii) The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;

(2) Statutes or regulations that ensure that the appropriate state agency will—

(i) Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;

(ii) Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and

(iii) Make written findings supporting the authorizations and regulations described in this paragraph based solely on the administrative record before the agency;

(3) A narrative discussion of the statutes or regulations required under paragraph (d)(2) of this section, and any additional policies or procedures concerning the regulation of nonsubsistence consumptive uses of marine mammals. This discussion must explain how the State's program satisfies the requirements of section 109(f) of the Act, namely that the regulation of nonsubsistence consumptive uses of marine mammals provides, to the maximum extent praticable, economic opportunities for the residents of rural coastal villages of Alaska who engage in subsistence uses of the species.

(e) To assist states in preparing the state management program for submission, the Service will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Services. Notwithstanding preliminary review by the Service, once any proposed aspect of the state management program has been prepared and submitted in final form, it shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f)(1) After receiving the state's request, for management authority, the Service shall make an initial determination on whether the state's management program meets the requirements of the Act and these regulations.

(2) Within 45 days after receiving the state's request, unless the state and the Service agree to another time period, the Service shall publish a general notice of its initial determination in the FEDERAL REGISTER together with, in the case of a positive determination, the text of a proposed rule to transfer management authority to the state. The general notice shall contain a summary of the major components of the state's management program and shall indicate where the full text of the management program may be inspected or copied. The public shall be allowed to submit written comments and to request an informal public hearing on the Service's initial determination and the state's management program within 60 days of publication of the general notice.

(g) If requested, the Service may conduct an informal public hearing after publishing 30 days' advance notice of the date, location, and time of such hearing in the FEDERAL REGISTER.

(h) After considering all comments and other relevant information, the Service shall publish in the FEDERAL REGISTER its final determination on whether the state has developed and will implement a management program that meets the requirement of the Act and these regulations. In the case of a positive final determination, the Service shall publish with the notice a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(1) The state's determinations pursuant to § 403.04 of this part are final and implemented under state law;

(2) Any cooperative allocation agreement required under § 403.05(a) of this part is implemented; and

(3) The state has enacted and submitted to the Service laws and policies that are substantially the same as those provided pursuant to § 403.03(a) in proposed form in the state's management program.

§ 403.04 Determinations and hearings under section 109(c) of the MMPA.

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determination by the State.* The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of:

(1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that nay be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any of copies of such documentation. The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documenta-

tion into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notificed the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The state agency shall provide for either:

(i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the state agency; or

(ii) Review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency must be made solely on the basis of the record developed at the hearing. The state agency in making its final determinations, and/or presiding officer(s) in making his (their) recommended determinations, may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The state agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Service and the public of its final determinations and shall provide access to or copies of its decision document and Hearing Record.

(h) *Judicial review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).

§ 403.05 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by section 403.04 of this part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the state's regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species:

(1) The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

(2) The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been transferred to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 403.06 Monitoring and review of state management program.

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state's first full fiscal or calendar year following the effective date of the Service's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The repot shall contain the following information current for each reporting period:

(1) Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to § 403.03(b), and, in the case of Alaska, § 403.03(d), of this part;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repealers, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of § 403.03 of this part that may impair the State's ability to implement the program;

(2) Any significant natural or man-made occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 403.04 of this part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, or, as appropriate, at the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, and at the appropriate Service's regional office.

§ 403.07 Revocation and return of state management authority.

(a) *Revocation of management.* The Service shall have responsibility to review management of a species transferred to a state under this part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this part and the state's approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this part, or the state's approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether or not the state continues to comply with the requirements of the Act, this part and the state's approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this part or the state's approved management program, it shall provide written notice to the state of its intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the FEDERAL REGISTER and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the provision of the Act, this part and the state's approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the FEDERAL REGISTER.

(b) *Voluntary return of management authority to the Service.* (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the FEDERAL REGISTER to this effect no sooner than 30 days (except in an emergency as determined by the Service) nor longer than 60 days after the state has provided notice of its intent to return management or unless otherwise agreed upon.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management pro-

gram, it shall so notify the Service together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 403.06(c)(1) of this part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the state, notwithstanding the requirements of § 403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with the requirements of the Act and this part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

§ 403.08 List of states to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed and, where appropriate, cooperative allocation agreements pursuant to § 403.05(c) are in force: [Reserved].

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

Subpart A—General Provisions

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424.21 Periodic review.

AUTHORITY: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

SOURCE: 49 FR 38908, Oct. 1, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that pertain to the listing of species and the determination of critical habitats.

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this Part 424, except as otherwise stated.

(b) "Candidate" means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) "Conservation," "conserve," and "conserving" mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) "Critical habitat" means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

(e) "Endangered species" means a species that is in danger of extinction throughout all or a significant portion of its range.

(f) "List" or "lists" means the Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

(g) "Plant" means any member of the plant kingdom, including, without limitation, seeds, roots, and other parts thereof.

(h) "Public hearing" means an informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

(i) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, as appropriate, or their authorized representatives.

(j) "Special management considerations or protection" means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

(k) "Species" includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) "State agency" means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(m) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(n) "Wildlife" or "fish and wildlife" means any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Subpart B—Revision of the Lists

§ 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40-17.48 and Parts 222 and 227) applied to a threatened species only in accordance with the procedures of this part.

§ 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section *solely* on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Over utilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction.* Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery.* The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(e) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see Part 23 of this Title 50) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

§ 424.12 Criteria for designating critical habitat.

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.*, trees, sand bars) shall not be used in defining critical habitat.

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

EXAMPLE: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated critical habitat if it were concluded that the upland areas were essential to the conservation of an aquatic species located in the ponds and lakes.

(e) The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

(f) Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated.

(g) Existing critical habitat may be revised according to procedures in this section as new data become available to the Secretary.

(h) Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, in-

best copy available

terested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

§ 424.14 Petitions.

(a) *General.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) *Petitions to list, delist, or reclassify species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. For the purposes of this section, "substantial information" is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making a finding under paragraph (b)(1) of this section, the Secretary shall consider whether such petition—

(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;

(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) Provides information regarding the status of the species over all or a significant portion of its range; and

(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the FEDERAL REGISTER a proposed regulation to implement the action pursuant to § 424.16 of this part, or

(iii) The petitioned action is warranted, but that—

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and

(B) Expeditious progress is being made to list, delist, or reclassify qualified species,

in which case, such finding shall be promptly published in the FEDERAL REGISTER together with a description and evaluation of the reasons and data on which the finding is based.

(4) If a finding is made under paragraph (b)(3)(iii) of this section with

regard to any petition, the Secretary shall, within 12 months of such finding, again make one of the findings described in paragraph (b)(3) with regard to such petition, but no further finding of substantial information will be required.

(c) *Petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scienific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making the finding required by paragraph (c)(1) of this section, the Secretary shall consider whether a petition contains—

(i) Information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

(3) Within 12 months after receiving a petition found under paragraph (c)(1) of this section to present substantial information indicating that revision of a critical habitat may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the FEDERAL REGISTER.

(d) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

§ 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the FEDERAL REGISTER. The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

(c) Such notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any foreign countries in which the subject species normally occur.

§ 424.16 Proposed rules.

(a) *General.* Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.

(c) *Procedures*—(1) *Notifications.* In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the FEDERAL REGISTER;

(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) *Period of public comments.* At least 60 days shall be allowed for public comment following publication in the FEDERAL REGISTER of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the FEDERAL REGISTER. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the FEDERAL REGISTER, and shall specify the basis for so doing.

(3) *Public hearings.* The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the FEDERAL REGISTER not less than 15 days before the hearing is held.

§ 424.17 Time limits and required actions.

(a) *General.* (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the FEDERAL REGISTER:

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) *Critical habitat designations.* A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,

in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the Federal Register. This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat will also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversly modify such habitat or be affected by such designation.

(b) *Effective date.* A final rule shall take effect—

(1) Not less than 30 days after it is published in the Federal Register, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the Federal Register of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with § 424.16(c)(1)(ii).

(c) *Disagreement with State agency.* If a State agency, given notice of a proposed rule in accordance with § 424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with § 424.14, the Secretary shall provide such agency with a written justification for the failure to adopt a rule consistent with the agency's comments or petition.

§ 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

§ 424.20 Emergency rules.

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in § 424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the FEDERAL REGISTER. In the case of any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the FEDERAL REGISTER of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§ 424.16, 424.17, 424.18, and 424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

§ 424.21 Periodic review.

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§ 424.11, 424.16, and 424.17 of this part, as appropriate. A notice announcing those species under active review will be published in the FEDERAL REGISTER. Notwithstanding this section's provisions, the Secretary may review the status of any species at any time based upon a petition (see § 424.14) or upon other data available to the Service.

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

PART 450—GENERAL PROVISIONS

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 450.01 Definitions

The following definitions apply to terms used in this subchapter.

"*Act*" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.

"*Agency action*" means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

"*Alternative courses of action*" means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisidiction.

"*Benefits*" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

"*Biological assessment*" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

"*Biological opinion*" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

"*Chairman*" means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

"*Committee*" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

"*Critical habitat*" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

"*Destruction or adverse modification*" is defined at 50 CFR 402.02.

"*Federal agency*" means any department, agency or instrumentality of the United States.

"*Irreversible or irretrievable commitment of resources*" means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

"*Jeopardize the continued existence of*" is defined at 50 CFR 402.02.

"*Mitigation and enhancement measures*" means measures, including live propagation, tranplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

"*Permit or license applicant*" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

"*Person*" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

"*Proposed action*" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

"*Secretary*" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

"*Service*" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

"*To the extent that such information is available to the applicant*" means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

[50 FR 8126, Feb. 28, 1985]

PART 451—APPLICATION PROCEDURE

Sec.
451.01 Definitions.
451.02 Applications for exemptions.
451.03 Endangered Species Committee.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

SOURCE: 50 FR 8127, Feb. 28, 1985, unless otherwise noted.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, D.C. 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20030.

(c) *Who may apply.* (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary's opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent known.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(vii) A description of all alternatives considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.

(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A complete discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A complete statement explaining why the proposed action is in the public interest.

(v) A complete explanation of why the action is of regional or national significance.

(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) *Review of the application by the Secretary.* (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d) and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (e) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with Part 452.

(g) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02.

(h) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the FEDERAL REGISTER (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Committee upon receipt of an application for exemption.

(i) The information collection requirements contained in Part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 451.03 Endangered Species Committee.

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY

Sec.

452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Secretary's report.
452.05 Hearings.
452.06 Parties and intervenors.
452.07 Separation of functions and *ex parte* communications.

Sec.
452.08 Submission of Secretary's report.
452.09 Consolidated and joint proceedings.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

SOURCE: 50 FR 8129, Feb. 28, 1985, unless otherwise noted.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Threshold determinations.* Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources; and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) *Burden of proof.* The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) *Negative finding.* If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary's denial shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(d) *Positive finding.* If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) *Secretary of State opinion.* The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Secretary's report.

(a) *Contents of the report.* If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) *Preparation of the report.* The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) *Hearings.* (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by § 451.02(e)(5). This information will be made part of the record.

(b) *Prehearing conferences.* (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Hearings and prehearing conferences will be announced by a notice in the FEDERAL REGISTER stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) *Conduct of hearings.*—(1) *Admissibility of evidence.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) *Applicant responsibility.* In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) *Open meetings and record.* All hearings and all hearing records shall be open to the public.

(g) *Requests for information, subpoenas.* (1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(h) *Information collection.* The information collection requirements contained in § 452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 452.06 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor's participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) *Separation of functions.* (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex parte communications.* The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

§ 452.08 Submission of Secretary's report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary's report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under § 452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.
453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.

Sec.
453.06 Additional committee powers.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

SOURCE: 50 FR 8130, Feb. 28, 1985, unless otherwise noted.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Final determinations.* Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:

(1) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and,

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) *Decision and order.* The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the FEDERAL REGISTER as soon as practicable.

(c) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action (1) regardless of whether the species was identified in the biological assessment, and (2) only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if (i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and (ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent. If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) *Finding by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the FEDERAL REGISTER inviting written submissions from interested persons. The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the FEDERAL REGISTER a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpoenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

CHAPTER V—MARINE MAMMAL COMMISSION

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PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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501.2 Definitions.
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501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

§ 501.1 Purpose and scope.

(a) *Purpose.* The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the "Commission") under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the "Act") by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to the purposes for which they were collected.

(b) *Scope.* These rules apply only to "record" contained in "systems of records," defined by the Act as follows:

> The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
>
> The term "system of records" means of group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the FEDERAL REGISTER, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

§ 501.2 Definitions.

(a) As used in this part:

(1) The term "Act" means the Privacy Act of 1974, 5 U.S.C. 552a.

(2) The term "Commission" means the Marine Mammal Commission.

(3) The term "Director" means the Executive Director of the Marine Mammal Commission.

(4) The term "Privacy Officer" means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).

§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the FEDERAL REGISTER, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the FEDERAL REGISTER. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

§ 501.4 Requests for access—times, places and requirements for identification of individuals.

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006, between the hours of 9 a.m. and 5 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5(d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual's photograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of ———— County of ————:

ss (Name of individual) who affixed (his) (her) signature below in my presence, came before me, a (Title), in the aforesaid County and State, this —— day of ——, 19—, and established (his)(her) identity to my satisfaction.

My Commission expires ————.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

§ 501.5 Disclosure of requested information.

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any portion of a record, notice of denial shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;

(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;

(3) A statement that the denial may be appealed to the Director;

(4) A statement of what steps must be taken to perfect an appeal to the Director, and,

(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

(d) Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in § 501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the FEDERAL REGISTER, the type of record in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;

(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,

(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

§ 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:

(1) Make the requested amendment or correction, in whole or in part, and advise the individual in writing of such action; or,

(2) Advise the individual in writing that the request has been initially denied, in whole or in part, stating, with respect to those portions denied;

(i) The date of the denial;

(ii) The reasons for the denial, including a citation to an appropriate section of the Act and these Rules; and,

(iii) The right of the individual to prosecute an appeal and to obtain judicial review should a final denial result from the appeal.

(c) In reviewing a request for amendment or correction of a record, the Privacy Officer shall consider the following criteria:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information sought to be amended or corrected;

(3) The relevance and necessity of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(4) The timeliness and currency of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(5) The completeness of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual. If an amendment or correction is otherwise permissible under the Act and other relevant statutes, a request shall be denied only if the individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment or correction in light of these criteria.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;

(2) A copy of the initial denial; and

(3) A precise statement of the reasons for the individual's belief that the denial is in error, referring specifically to the criteria contained in § 501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in § 501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform the individual of his or her right to submit to the Privacy Officer, for inclusion in the record, a concise statement of grounds for disagreement with the final determination. Receipt of any such statement shall be acknowledged by the Privacy Officer, and all subsequent and prior users of the record shall be provided copies of the statement. The notice shall also inform the individual of his or her right, under 5 U.S.C. 552a(g)(1), to obtain judicial review of the final determination.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.9 Fees.

A fee of $0.10 shall be charged for each copy of each page of a record made, by photocopy or similar process, at the request of an individual. No fee shall be charged for copies made at the initiative of the Commission incident to granting access to a record. A total copying fee of $2.00 or less may be waived by the Privacy Officer, but fees for all requests made contemporaneously by an individual shall be aggregated to determine the total fee.

[41 FR 5, Jan. 2, 1976]

PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec.
510.1 Purpose.
510.2 Scope.
510.3 Definitions.
510.4 Calling of meetings.
510.5 Notice of meetings.
510.6 Public participation.
510.7 Closed meetings.
510.8 Minutes.
510.9 Uniform pay guidelines.

AUTHORITY: Sec. 8(a), Federal Advisory Committee Act, 5 U.S.C. App. I.

SOURCE: 41 FR 3306, Jan. 22, 1976, unless otherwise noted.

§ 510.1 Purpose.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5 U.S.C. Appendix I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.2 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.3 Definitions.

For the purposes of this part,

(a) The term "Act" means the Federal Advisory Committee Act, 5 U.S.C. Appendix I;

(b) The term "Chairperson" means each person selected to chair an advisory committee established by the Commission;

(c) The term "Commission" means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term "committee" means any advisory committee reporting to the Commission; and

(e) The term "Designee" means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the "agency head."

§ 510.4 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to § 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the Freedom of Information Act, 5 U.S.C. 552(b).

[41 FR 3306, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

§ 510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to § 510.7.

§ 510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time constraints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§ 510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§ 510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public;

and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. Appendix I.

PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.
520.1 Purpose.
520.2 Scope.
520.3 Definitions.
520.4 Availability of materials.
520.5 Administrative appeal.
520.6 Extension of time.
520.7 Fees.

Authority: 5 U.S.C. 552.

Source: 41 FR 3307, Jan. 22, 1976, unless otherwise noted.

§ 520.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

§ 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the Federal Register; to the Commission's administrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 520.3 Definitions.

As used in these regulations:

(a) The term "Commission" means the Marine Mammal Commission;

(b) The term "Director" means the Executive Director of the Marine Mammal Commission;

(c) The term "exempt materials" means those materials described in § 520.2(b);

(d) The term "non-exempt materials" refers to all materials described in § 520.2(a), but not included in § 520.2(b); and

(e) The term "General Counsel" means the General Counsel of the Marine Mammal Commission.

§ 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, D.C. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.

(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, DC 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.

(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in § 520.2(a); if it is, the request shall be granted unless the material is exempted by § 520.2(b). If the material requested is not of a type described in § 520.2(a), or is the subject of one or more exemptions, the request shall be denied.

(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in § 520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.

(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under § 520.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in § 520.4(f).

(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 520.5, to appeal the denial to the Director.

§ 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with § 520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

§ 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in § 520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) *Search:* $4.00 per person-hour for clerical time; $8.00 per person-hour for professional or supervisory time;

(2) *Duplication:* $0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

[41 FR 3307, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
530.1 Purpose.
530.2 Ensuring that environmental documents are actually considered in agency decision-making.
530.3 Typical classes of action.
530.4 Environmental information.

AUTHORITY: National Environmental Policy Act, Pub. L. 91-190; 42 U.S.C. 4321 et seq.

SOURCE: 44 FR 52837, Sept. 11, 1979, unless otherwise noted.

§ 530.1 Purpose.

The purpose of this part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions identified in section 1507.3(b) of the regulations which are applicable to the activities of the Commission in light of its statutory functions and responsibilities.

§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b)(2), in conjunction with section 1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS's or environmental assessments. As a general matter, the Commission's activities do not include actions for which EIS's or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission's activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS's, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission's compliance with NEPA.

PART 540—INFORMATION SECURITY

Sec.
540.1 Policy.
540.2 Program.
540.3 Procedures.

AUTHORITY: Executive Order 12356.

EDITORIAL NOTE: Nomenclature changes affecting Part 540 appear at 47 FR 55489, Dec. 10, 1982.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12356 in matters relating to national security information.

[44 FR 55381, Sept. 26, 1979]

§ 540.2 Program.

The Executive Director is designated as the Commission's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the Commission's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12356, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

[44 FR 55381, Sept. 26, 1979]

§ 540.3 Procedures.

(a) *Mandatory declassification review.* All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Exective Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12356, unless the fact of its existence or nonexistence would itself be classified under Executive Order 12356. Requests for declassification shall be acted upon promptly providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director will refer all requests for national security information in its custody to the Federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12356 and that agency's regulations and guidelines.

(b) *Exceptional cases.* When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall ensure that it is protected in accordance with Executive Order 12356 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency's regulations and guidelines.

(c) *Derivative classification.* Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12356, Section 2-1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;

(2) The identity of the Commission employee originating the derivatively classified document;

(3) The dates or events for declassification or review for declassification indicated on the classified source material; and

(4) Any additional authorized markings appearing on the source material.

(d) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12356, its implementing directives, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) *Storage.* All classified documents shall be stored in the combination safe located in the Commission's offices. The combination shall be changed as required by ISOO Directive No. 1, dated June 23, 1982. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12356 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) *Agency terminology.* The use of the terms "Top Secret", "Secret", and "Confidential" shall be limited to materials classified for national security purposes.

[44 FR 55381, Sept. 26, 1979, as amended at 47 FR 55489, Dec. 10, 1982; 48 FR 44834, Sept. 30, 1983]

PART 550—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY MARINE MAMMAL COMMISSION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4579, Feb. 5, 1986, unless otherwise noted.

§ 550.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive

Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 550.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 550.103 Definitions.

For purposes of this part, the term—

"*Assistant Attorney General*" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"*Auxiliary aids*" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"*Complete complaint*" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"*Facility*" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"*Handicapped person*" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"*Qualified handicapped person*" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 550.140.

"*Section 504*" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 550.104—550.109 [Reserved]

§ 550.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 550.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 550.112—550.129 [Reserved]

§ 550.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 550.131—550.139 [Reserved]

§ 550.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 550.141—550.148 [Reserved]

§ 550.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 550.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 550.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would

result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 550.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 550.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 550.152—550.159 [Reserved]

§ 550.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 550.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 550.161—550.169 [Reserved]

§ 550.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel for the Commission shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel for the Commission, Marine Mammal Commission, Room 307, 1625-I Street, NW, Washington, D.C. 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 550.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4579, Feb. 5, 1986, as amended at 51 FR 4579, Feb. 5, 1986]

§§ 550.171—550.999 [Reserved]

PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

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AUTHORITY: 5 U.S.C. 552b(g).

SOURCE: 50 FR 2571, Jan. 17, 1985, unless otherwise noted.

§ 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decision making processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

§ 560.2 Definitions.

For purposes of this part, the term—

"*Administrative Officer*" means the Administrative Officer of the Marine Mammal Commission.

"*Commission*" means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom is appointed by the President, by and with the advice and consent of the Senate.

"*Commissioner*" means an individual who is a member of the Marine Mammal Commission.

"*Executive Director*" means the Executive Director of the Marine Mammal Commission.

"*General Counsel*" means the General Counsel of the Marine Mammal Commission.

"*Meeting*" means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner's consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether to:

(1) Hold a meeting with less than 7 days notice, as provided in § 560.4(d) of this part;

(2) Change the subject matter of a publicly announced meeting or the determination of the Commission to open or close a meeting or portions thereof to public observation, as provided in § 560.4(e) of this part;

(3) Change the time or place of an announced meeting, as provided in § 560.4(f) of this part;

(4) Close a meeting or portions of a meeting as provided in § 560.5 of this part; or

(5) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 560.5 of this part.

"*Public observation*" means attendance by one or more members of the public at a meeting of the Commission, but does not include participation in the meeting.

"*Public participation*" means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

§ 560.3 Open meetings.

(a) Except as otherwise provided in this part, every portion of every meeting of the Commission shall be open to public observation.

(b) Meetings of the Commission, or portions thereof, shall be open to public participation only when an announcement to that effect is issued under § 560.4(b)(4) of this part. Public participation shall be conducted in an orderly, nondisruptive manner and in accordance with such procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(c) When holding open meetings, the Commission shall make a diligent effort to provide ample space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting.

(d) Members of the public may record open meetings of the Commission by means of any mechanical or electronic device, unless the chairperson of the meeting determines that such recording would disrupt the orderly conduct of the meeting.

§ 560.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least 7 days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions thereof closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Submitting the announcement for publication in the FEDERAL REGISTER;

(2) Distributing the announcement to affected governmental entities;

(3) Mailing the announcement to persons and organizations known to have an interest in the subject matter of the meeting; and

(4) Other means that the Executive Director deems appropriate to inform interested parties.

(d) A meeting may be held with less than 7 days notice if a majority of the members of the Commission determine by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(e) The subject matter of an announced meeting, or the determination of the Commission to open or close a meeting or portions thereof to public observation, may be changed if a majority of the members of the Commission determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible. The Commission shall make a public announcement of the changes made and the vote of each member on each change at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(f) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

§ 560.5 Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions thereof may be withheld from the public, only if the Commission determines that such meeting or portions thereof, or the disclosure of such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to that Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve either accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose either investigatory records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to either a fair trial or an impartial ajudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source or sources,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission. This exception shall not apply in any instance where the Commission has already disclosed to the public the content or nature of the proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Commis-

sion, or the participation of the Commission in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting or portions thereof may be closed to public observation, the Commission shall determine, notwithstanding the exemptions set forth in paragraph (a) of this section, whether or not the public interest requires that the meeting or portions thereof be open. The Commission may open a meeting or portions thereof that could be closed under paragraph (a) of this section if the Commission finds it to be in the public interest to do so.

§ 560.6 Procedures for closing meetings.

(a) A meeting or portions thereof may be closed and information pertaining to such meeting or portions thereof may be withheld under § 560.5 of this part only when a majority of the members of the Commission vote to take such action.

(b) A separate vote of the members of the Commission shall be taken with respect to each meeting or portion thereof proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed, so long as each meeting or portion thereof in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in §§ 560.5(a) (5), (6) or (7) of this part. Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion thereof.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemptive provision from § 560.5(a) of this part.

(e) Within one day of a vote taken pursuant to this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing together with a list of all persons expected to attend the meeting and their affiliation.

§ 560.7 Recordkeeping requirements.

(a) Except as otherwise provided in this section, the Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting, whether opened or closed.

(b) In the case of either a meeting or portions of a meeting closed to the public pursuant to § 560.5(a) (8) or (10) of this part, the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

§ 560.8 Public availability of records.

(a) The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information which may be withheld under § 560.5 of this part.

(b) The transcript, electronic recordings or minutes of a meeting shall be made available for public review as soon as practicable after each meeting at the Marine Mammal Commission, 1625 I Street NW., Washington, D.C. 20006.

(c) Copies of the transcript, a transcription of the electronic recording, or the minutes of a meeting shall be furnished at cost to any person upon written request. Written requests should be addressed to the Administrative Officer, Marine Mammal Commission, 1625 I Street NW., Washington, D.C. 20006.

FINDING AIDS

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